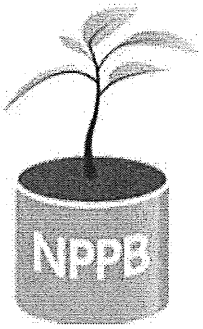

Community Legal Training -
Immigration and Asylum Law Update

delivered by

Wilsons:
Believe in justice for all

Thursday 26th October 2017

at the Northumberland Park Resource Centre

177 Park Lane, Tottenham, N17 0HJ

In partnership with:

Haringey Law Centre

Brighter Futures

NORTH LONDON PARTNERSHIP CONSORTIUM LTD

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In 1989, Andrew Wilson founded Wilson and Co Solicitors from a small office in Tottenham. His aim was to offer excellent legal services to the whole community. We have grown since then, but we still have this goal.

Our clients come first

Our clients are at the heart of everything we do. We have built a reputation for integrity, independence and tenacity, especially with the most challenging cases. We achieve this by keeping things simple. Our solicitors each specialise in one area of law. Their focus gives them extensive knowledge and experience. They are all experts in their fields, so you can be confident that your case is in good hands. Our focus on efficient, well-structured service delivery ensures all clients get great value for money.

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At Wilsons we value having a social conscience. We remain committed to our legal aid work and act for some of the most vulnerable and disadvantaged people in society. The partners and staff are active in a whole range of social and campaigning issues related to our core legal work. We give time to support organisations that promote the welfare and rights of immigrants. We are actively involved in fund raising for charities, individually and through the annual London [illegible]al Walk. We support local charities and schools in Tottenham. We very much believe in the goodness of Tottenham as an area and actively promote positive images of our community, not least of all by having a successful law firm employing around 100 staff in the heart of a deprived area. We are keen environmentalists. We recycle our paper and we promote cycling to work. If you visit us by bicycle you are welcome to use our secure cycle parking facilities.

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Because everyone at Wilsons is a specialist in the field of their choice, you can be sure our immigration solicitors are not only experts, but also passionate about achieving the best possible outcome for you in this complex area of law.

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If you are a business, local authority or charity we can advise you on your immigration law needs including recruitment of skilled workers and compliance issues.
We can also advise you on the immigration options for setting up a business in the UK.

To discuss aspects of our work, or to obtain a quote for your case, email us: immigration@wilsonllp.co.uk or call us on **020 8808 7535** .

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We know that when you are on the wrong end of a government decision, be it national or local, you will feel confused, concerned, and anxious to know if the decision is lawful or not. Our public law department is here to help, and to seek redress for any loss you have suffered.

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We have a wide range of experience in advising on the lawfulness of government decisions and bringing legal proceedings against government in order to ensure it acts within the law. Our team regularly brings proceedings for what is known as a Judicial Review of a government decision – where the court is asked to review whether a decision is lawful or not. We team up with some of the best barristers in the country to bring these challenges.

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We have succeeded in winning substantial damages for individuals who have been the victims of unlawful government action. We have a particular reputation for bringing actions against the Home Office for the unlawful detention of individuals. We also advise on bringing actions against local authorities, the police and the prison service.

Bringing a challenge

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Wilsons:

Ana Gonzalez
Partner

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Ana Gonzalez was born in Spain and graduated in Employment Law at the University of A Coruña. She moved to the UK in 4, qualifying as a solicitor in 2003. Ana became a partner in 2010.

Having trained in asylum, nationality and public law, she now practises in immigration and asylum work, and has interests in human rights and European Law. Ana is an internationally recognised expert in gender and sexuality-based asylum claims as well as having extensive expertise in representing individuals from vulnerable, marginalised client groups such as victims of human trafficking, apostates and transgender individuals. Ana is frequently instructed by Local Authorities all over the Greater London area to act for children and adults in their care.

Ana is praised in Chambers and Partners for her "constant attention to cases, leading client care and real knowledge of the law." She "continues to stand out for significant work on human trafficking cases, often raising new country guidance points" (2012). "She is a stand-out practitioner in the field of refugee law, with particular expertise in trafficking cases" (2014). She "is very experienced, passionate and has very good judgement." (2016)

She practises in all aspects of immigration and asylum work, and has a specialist interest in European law. Ana has extensive experience of litigating in the higher courts, having had numerous cases over the years in the Administrative Court/Upper Tribunal and Court of Appeal. She has also conducted cases in the Supreme Court and the Court of Justice of the European Union in Luxembourg.

Ana has been with the firm since 1999. Prior to joining us Ana was at the well-respected Refugee Legal Centre. She has been a guest speaker at the London School of Economics and is a volunteer lawyer for UK Lesbian and Gay Immigration Group as well as for Micro Rainbow International.

Languages: Fluent in Spanish and Portuguese.

Wilsons:

Katy Robinson
Solicitor

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Katy studied French and Japanese at the University of Wales, Cardiff, and graduated in 2002 with a First Class (honours) degree. She converted to law and was awarded a distinction in the Legal Practice Course in 2012. Katy also holds an MA in Understanding and Securing Human Rights from the University of London, obtained in 2007.

Katy joined the firm in 2010 as a caseworker in the immigration department and qualified as a solicitor in 2013 having trained in our immigration, crime and public law departments.

Katy is a dedicated public lawyer. Katy has experience of working on a wide range of cases and has a keen interest in public law challenges with a immigration aspect, in particular challenges to immigration detention and the detained fast track, and community care matters for clients with ongoing immigration issues. She has a particular interest in working with very vulnerable clients and those with serious mental health problems.

Prior to joining Wilsons, Katy worked for three years as an appeals caseworker at the Refugee Legal Centre, preparing and presenting asylum appeals. She previously volunteered at Bail for Immigration Detainees and worked for the International Rescue Committee on a programme to promote the rule of law in Darfur, Sudan.

Katy was a finalist at the Legal Aid Lawyer of the Year awards in 2017 in the Public Law category.

Languages: French and conversational Sudanese Arabic

Interests: Playing and listening to music, growing vegetables, cycling in hilly places and cooking

Wilsons:

Eleanor Simon
Solicitor

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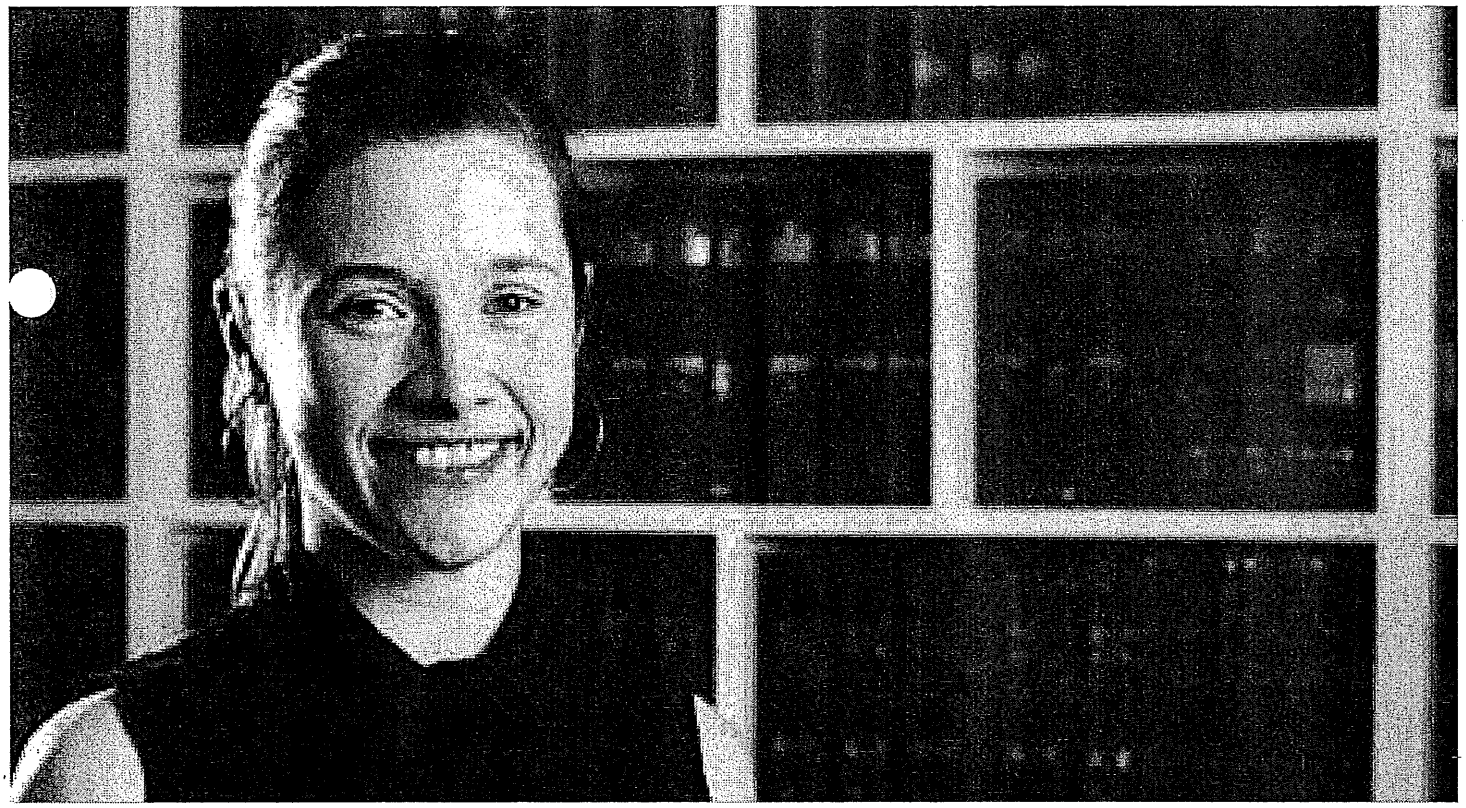

Eleanor studied French and Politics at the University of Nottingham, before converting to Law at BPP in 2011. She joined ;ons in September 2011 and became an asylum caseworker in January 2013 and was awarded a training contract in October 2014.

She was awarded the Litigation prize at the London Metropolitan University in 2015.

Eleanor qualified as a solicitor in October 2016.

Before joining Wilsons, Eleanor was a regular volunteer at the Nottingham Refugee Forum and then at the Refugee Council in London. She has spent time living and working in France, including with a non-governmental organisation, supporting disadvantaged and excluded young people.

Eleanor is an accredited senior level 2 caseworker. She specialises in immigration, asylum and human rights law, advising legally aided and private clients.

She has experience in immigration-related initial applications, appeals and judicial review work, including asylum, trafficking, domestic violence, Article 8, entry clearance and third country removal.

She has extensive experience and a particular interest in acting for vulnerable clients, including unaccompanied asylum-seeking children, victims of trafficking and victims of human rights abuses and torture.

Languages: French.

Interests: Hiking, cycling and running.

OVERVIEW OF TYPES OF IMMIGRATION STATUS AND ENTITLEMENT TO PUBLIC FUNDS

Very broadly – the main types of immigration status relevant to our local community:

- Asylum
- Domestic violence
- Trafficking
- Article 8 – leave to remain as a parent of a child in the UK

Entitlement to public funds will be covered in more detail in later section *How to make an effective referral to an immigration solicitor.* In this section, we simply state whether the particular type of immigration status is covered by legal aid (client's means will always need to be assessed to check they are eligible financially as well).

ASYLUM

There is legal aid for asylum cases.

Requirements

The 1951 Convention Relating to the Status of Refugees (the "Convention") defines a refugee as a person who:-

"..... *owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is out of the country of his nationality and is unable or owing to such a fear, is unwilling to avail himself of the protection of that country* ....."

The UK Immigration Rules provide that you will be granted asylum if you are a refugee as defined by the Convention and "refusing his application will result in his being required to go "whether immediately or after the time limited by an existing leave to enter or remain" in breach of the Convention ..... to a country in which his life for freedom would be threatened on account of his race, religion, nationality, political opinion or membership or a particular social group".

Grant of leave to remain as a refugee – rights and entitlements

If granted asylum, client will be granted 5 years' leave to remain. Then in the month before that leave expires, can then apply for ILR.

- **Travel document**
- **Family reunion** – can apply for entry clearance to the UK for immediate dependant relatives (wife/husband and children under the age of 18).
- **Employment:** free to obtain National Insurance number and employment.
- **Benefits:** entitled to benefits.
- **Housing:** no immigration restrictions on entitlement to emergency housing or public sector housing.
- **Education:** treated as a home student for the purposes of assessing college fees and normal three year residential requirement in the UK for a grant does not apply.

TRAFFICKING

There is legal aid for trafficking cases if there is a positive Reasonable Grounds decision.

Requirements/definition

Types of Human trafficking

There are several categories of exploitation linked to human trafficking, including:

- Sexual exploitation
- Forced labour
- Domestic servitude
- Organ harvesting
- Child related crimes such as child sexual exploitation, forced begging, illegal drug cultivation, organised theft, related benefit frauds etc
- Forced marriage and illegal adoption (if other constituent elements are present)

Article 3 of the Palermo Protocol - is the internationally accepted definition of human trafficking.

Trafficking breaks down into three elements:

1. The act (what is done) '*Recruitment, transportation, transfer, harbouring, or receipt of persons*' (does not need to cross national borders);
2. The means (how it is done) '*Threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person*';
3. The purpose (why it is done) '*For the purpose of exploitation... Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs*' (there is no requirement for the purpose to have been achieved, so a person who is rescued before exploitation occurs is still a victim of trafficking).

For children, only two components required - movement and exploitation - because a child cannot give consent to being exploited, even if they are aware/agree to being moved.

What is the National Referral Mechanism?

The National Referral Mechanism (NRM) is a framework for identifying victims of human trafficking and ensuring they receive the appropriate protection and support.

How does the NRM work?

First responders

To be referred to the NRM, potential victims of trafficking must first be referred to one of the UK's two competent authorities - the UKHTC or Home Office. This initial referral *must* be made by an authorised agency, known as the 'first responder'. First responder agencies are:

- *Police forces*
- *UK Border Force*
- *Home Office Immigration and Visas*
- *Gangmasters Licensing Authority*
- *Local Authorities*
- *Health and Social Care Trusts (Northern Ireland)*
- *Salvation Army*
- *Migrant Help*
- *Medaille Trust*
- *Kalayaan*
- *Barnardos*
- *Unseen*
- *TARA Project (Scotland)*
- *NSPCC (CTAC)*
- *BAWSO*
- *New Pathways*
- *Refugee Council*

Indicators of trafficking

First Responders need to know how recognise the signs which may indicate a person is a victim of trafficking in order to refer a case to the NRM, as ***potential victims of trafficking may be reluctant to come forward with information and may not recognise themselves as having been trafficked or be reluctant/unable to self-identify.***

- It is not uncommon for traffickers to provide stories for victims to tell if approached by the authorities. Errors or lack of reality may be because their initial stories are composed by others and learnt.
- Victims' early accounts may also be affected by the impact of trauma. In particular, victims may experience post traumatic stress disorder, which can result in the following symptoms:
  - hostility
  - aggression
  - difficulty in recalling details or entire episodes
  - difficulty concentrating

- They may fear the authorities - traffickers may have provided inaccurate information about the role of authorities; they may have had bad experiences with corrupt authorities in their home country or during their journey.

- *Physical indicators*:

  - injuries apparently as a result of assault or controlling measures

- neurological symptoms, headaches, dizzy spells, memory loss
- gastrointestinal, cardiovascular, musculoskeletal symptoms
- tattoos or other marks indicating ownership by exploiters
- work related injuries through inadequate personal protective equipment or poor health and safety measures

- *Sexual health indicators:*

- pregnancy as a result of trafficking situation or forced termination of a pregnancy
- sexually transmitted diseases
- injuries of a sexual nature
- gynaecological symptoms such as urinary or vaginal infections, pelvic inflammation or pain or irregular bleeding

- *Psychological indicators:*

- expression of fear or anxiety
- depression (lack of interest in engaging in activities, lack of interest in engaging with other individuals, hopelessness)
- isolation
- suffering from post-traumatic stress and/or a range of other trauma induced mental or physical illnesses, symptoms of post-traumatic stress (which may include: hostility; aggression; difficulty in recalling details or entire episodes; difficulty concentrating)
- drug/alcohol use
- self harm; suicidal feelings
- an attitude of self blame, shame and an extensive loss of control

- *Situational and environmental indicators:*

- distrust of authorities
- acting as if instructed by another
- lack of knowledge about the area they live in the UK
- fear of saying what their immigration status is
- fearful and emotional about their family or dependents
- limited English, eg only having vocabulary relating to their exploitative situation
- passport or travel document has been confiscated
- someone has taken advantage of their illegal status in the UK

- *Indicators of forced labour and domestic servitude, withholding:*
- passports
- payments
- information about a person's rights as workers/visitors in the UK

- *Victims who are reluctant to self identify. They may fear:*

- punishment at the hands of their traffickers
- punishment by the authorities
- deportation
- juju or witchcraft rituals
- discrimination from their community and families
- being accused of being complicit in their modern slavery situation
- Reprisals against them or their children or families

- Some victims may believe themselves to be in a relationship with their exploiter; Stockholm syndrome, where due to unequal power, victims create a false emotional or psychological attachment to their controller

- *Some victims may be unwilling to disclose details of their experience because*:

  - they may be in a situation of dependency
  - stigma attached to trafficking (can be seen as prostitution)
  - unable and/or unwilling to think of themselves as 'victims'
  - they may see their current situation as temporary and blame it on their lack of understanding of the culture and labour market in the UK
  - they may see it as a 'stepping stone' to a better future and compare it favourably to experiences at home - therefore consider objective indicators such as seizure of identity documents or use of threats by the employer/exploiter
  - they may have been groomed into believing that they are complicit in the process
  - children may have a different cultural understanding of childhood and feel they are young adults responsible for earning money for their family - they may see an exploitative situation as a sacrifice to be made for their family
  - they may not be aware of support structures and their entitlements and feel that they are dependent on traffickers

Trafficking decision

There are two stages to a trafficking decision:

Stage one – "Reasonable grounds"
The NRM team decides whether there are reasonable grounds to believe the individual is a potential victim of human trafficking. The threshold at Reasonable Grounds stage is; "*from the information available so far I believe but cannot prove*" that the individual is a potential victim of trafficking.

If the decision is positive, then the potential victim will be:

- allocated a place within Government funded safe house accommodation, if required
- granted a reflection and recovery period of 45 calendar days.

Stage two – "Conclusive grounds"
Following a positive Reasonable Grounds decision, the Competent Authority gathers further information relating to the referral from the first responder and other agencies and makes a conclusive decision on whether the referred person is a victim of human trafficking.

The threshold for a Conclusive Decision is that on the balance of probability "*it is more likely than not*" that the individual is a victim of human trafficking or modern slavery.

Leave to remain as a victim of trafficking

Even if accepted conclusively as a Victim of Trafficking, the recognised victim won't necessarily be granted leave. If victim is, it would normally be for 1 year 1 day. Extensions can be applied for.

Grounds on which leave should be granted as per the Trafficking Convention:

> *Article 14 – Residence permit*
> *1. Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:*
> *a)* ***the competent authority considers that their stay is necessary owing to their personal situation;***
> *b)* ***the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.***

The guidance on the "personal situation" requirement states that the victim's safety, state of health, family situation or some other factor has to be taken into account - for example, to allow them to finish a course of medical treatment that would not be readily available if they were to return home. This is normally interpreted to mean any treatment for conditions arising as a result of the trafficking experience – eg counselling due to the trauma of experiences of being trafficking (rather than counselling for any other reason)

Any refusals can only be challenged by way of judicial review.

DOMESTIC VIOLENCE

There is legal aid for domestic violence cases

Requirements

Indefinite leave to remain in the UK as the victim of domestic violence

Destitution Domestic Violence Concession

If client is destitute, s/he can make an application to the Home Office under the Destitution Domestic Violence Concession for 3 months' leave with access to public funds before making the application for ILR on the basis of DV. If granted, this leave with access to public funds will

replace her/his current leave and be for a limited time of 3 months only – the application for ILR on the basis of domestic violence will need to be submitted within this 3 month period.

The requirements to be met by a person who is the victim of domestic violence and who is seeking indefinite leave to remain in the UK are found in Appendix FM of the Immigration Rules. The key requirements are:

- The applicant's first grant of limited leave must have been as a partner of a British Citizen or a person settled in the UK and any subsequent grant of limited leave must have been as a partner of a British Citizen or a person settled in the UK or under the DDVC (as above)

- The applicant must provide evidence that during the last period of limited leave as a partner of a British Citizen or a person settled in the UK, the applicant's relationship with their partner broke down permanently ***as a result of*** domestic violence.

Examples of documentary evidence that can be used to support the application showing that the relationship has broken down as a result of DV:

- *A letter or other document showing that a Multi-Agency Risk Assessment Conference (MARAC) has been convened on your behalf*
- *A Non-Molestation Order or other protection order against the person(s) who committed the violence. This must be a final order, not an interim or ex-parte order.*
- *A medical report from a hospital doctor or GMC registered family practitioner (GP) who has examined you confirming that your injuries are consistent with being a victim of domestic violence.*
- *The report must include the doctor's GMC Registration Number and must provide the date you first registered, the dates of your visits in which domestic violence was reported, and an extract from the record of these details.*
- *An undertaking given to a court that the person(s) who committed the violence will not approach you.*
- *A police report confirming that, because of a domestic violence incident, they attended the address at which the incident(s) took place.*
- *A copy of the incident log must be provided. It must show the address(es) at which the incident(s) took place.*
- *A letter from a social services department confirming its involvement in connection with domestic violence committed against you.*
- *A letter of support or a report from a domestic violence support organisation/refuge.*
- *Other documentary evidence showing that you have been the victim of domestic violence*

A lack of this evidence does not mean that an application cannot be made, just that it will be more difficult. Detailed statements can be taken from client, witnesses etc as further supporting evidence.

Leave as victim of DV

- Client will be granted ILR, with all the benefits and entitlements that entails

ARTICLE 8 - LEAVE TO REMAIN FOR PARENTS OF CHILDREN IN THE UK

As a general rule, there is no legal aid for these cases

Requirements

The provisions relating to applications for leave to remain in the UK on the basis of family life as a parent of a child in the UK can be found in Appendix FM. Provision for Article 8 is said to be covered ***by paragraph EX.1. of Appendix FM.***

The key requirements are:

Relationship requirements

- The child of the applicant must be-
- under the age of 18 years at the date of application (or where the child has turned 18 years of age since the applicant was first granted entry clearance or leave to remain as a parent under this Appendix, must not have formed an independent family unit or be leading an independent life);
- living in the UK; and
- a British Citizen or settled in the UK; or
- has lived in the UK continuously for at least the 7 years immediately preceding the date of application and paragraph EX.1. applies.

- Either-
- the applicant must have sole parental responsibility for the child or the child normally lives with the applicant, and the applicant must not be eligible to apply for leave to remain as a partner under this Appendix; or
- the parent or carer with whom the child normally lives must be-

(i) a British Citizen in the UK or settled in the UK;

(ii) not the partner of the applicant; and

(iii) the applicant must not be eligible to apply for leave to remain as a partner under this Appendix.

- The applicant must provide evidence that they have either-

(i) sole parental responsibility for the child, or that the child normally lives with them; or

(ii) direct access (in person) to the child, as agreed with the parent or carer with whom the child normally lives or as ordered by a court in the UK; and

- The applicant must provide evidence that they are taking, and intend to continue to take, an active role in the child's upbringing.

Immigration status requirement

There are various immigration status requirements - mainly the applicant must not be in the UK as a visitor; with leave granted for a period of 6 months or less; or in breach of immigration laws ***unless paragraph EX.1. applies*** (see below)

Financial requirements

The applicant must provide evidence that they will be able to adequately maintain and accommodate themselves and any dependents in the UK without recourse to public funds, ***unless paragraph EX.1. applies***.

English language requirement

This requirement must be met, ***unless paragraph EX.1. applies***.

EX.1.

This paragraph applies if

- the applicant has a genuine and subsisting parental relationship with a child who-
  - is under the age of 18 years (or was under the age of 18 years when the applicant was first granted leave on the basis that this paragraph applied);
  - is in the UK;
  - is a British Citizen or has lived in the UK continuously for at least the 7 years immediately preceding the date of application; and
- taking into account their best interests as a primary consideration, it would not be reasonable to expect the child to leave the UK; or
- the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen, settled in the UK or in the UK with refugee leave or humanitarian protection, and there are insurmountable obstacles to family life with that partner continuing outside the UK.

EX.2. "insurmountable obstacles" means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner

Leave to remain as a parent

If successful, Applicant will be granted limited leave to remain for a period not exceeding 30 months, and normally subject to a condition of no recourse to public funds. The Applicant can request by way of notification to the Home Office that the condition No Recourse to Public Funds is removed from the grant of leave because there are particularly compelling reasons relating to the welfare of the child on account of the parent's very low income – evidence of which will need to be provided.

RIGHTS OF EEA NATIONALS AND THEIR FAMILIES

Key Points You Need to Know

- In most cases European immigration law gives you automatic rights. You don't need a piece of paper to prove your right to be here.

- What are the different automatic rights?

  - Three months each time a European enters the UK.
  - A job seeker.
  - An employed person.
  - A self-sufficient person (but you would need to have 'comprehensive medical cover' – i.e. full medical insurance).
  - A student (but you also would need to have 'comprehensive medical cover').
  - Someone temporarily or permanently incapacitated from working.
  - Retired workers and self-employed persons who meet certain criteria.
  - 'Family members'. (Does not include 'extended family members' such as unmarried partners who do not automatically acquire their right to be here but only obtain the right when they are issued with documentation by the Home Office confirming these rights.)
  - Permanent residence, in most cases after five years of being here in one of the categories mentioned above.

- How is Brexit going to affect these automatic rights?

  - No one knows for sure the answer to this question but the UK government has set out their initial bargaining position in a sixteen page document published on 26 June 2017 entitled "The United Kingdom's Exit from the European Union: Safeguarding the Position of EU Citizens living in the UK and UK nationals living in the EU". See: https://www.gov.uk/government/publications/safeguarding-the-position-of-eu-citizens-in-the-uk-and-uk-nationals-in-the-eu/the-united-kingdoms-exit-from-the-european-union-safeguarding-the-position-of-eu-citizens-living-in-the-uk-and-uk-nationals-living-in-the-eu. This was then summarised – and to a certain extent elaborated upon – by a statement made by the Prime Minister in the House of Commons on 26 June 2017. See: https://www.gov.uk/government/speeches/pm-commons-statement-on-european-council-26-june-2017.
    While these documents set out the opening bargaining position by the Government of the United Kingdom with respect to the issue of how European nationals are going to be treated in the United Kingdom when Brexit occurs – and therefore are subject to change as the negotiations develop – some of the basic principles set out in these documents are likely to remain relevant.
    These are some of the main points emerging from these documents:-

    - ❖ While the automatic rights described above will remain in place until the actual date of Brexit, these automatic rights are likely to cease automatically when

Brexit occurs and the UK leaves the European Union.

- The Government intends to create new rights in UK law for qualifying European citizens resident here before Brexit occurs. These rights will apply to all European citizens equally and qualifying European citizens will have to apply for this "residence status" under British law.
- Any EU citizen in the United Kingdom with five years' continuous residence – at a specified cut-off date – will be granted "settled status" which will effectively be the same as "indefinite leave to remain in the United Kingdom" under current British immigration law.
- This specified cut-off date will be the subject of negotiation but will be no earlier than the date that the United Kingdom triggered Article 50, namely 29 March 2017, and no later than the actual date of Brexit, presumably sometime in 2019.
- To qualify, EU citizens must have been resident in the United Kingdom before the specified date and must have completed a period of five years' continuous residence in the UK before they apply for "settled status", at which point they must still be resident.
- Those EU citizens who arrived and became resident before the specified date but have not accrued five years' continuous residence at the time of the UK's exit, will be able to apply for temporary status in order to remain resident in the United Kingdom until they have accumulated five years, after which they will be eligible to apply for "settled status".
- Those EU citizens who arrived after the specified date (but before Brexit) will be allowed to remain in the UK for at least a temporary period and may become eligible to settle permanently, depending on their circumstances and the new rules, but this group should have no expectation of guaranteed "settled status".
- Family dependants who join a qualifying EU citizen in the UK before the specified date will be able to apply for "settled status" after five years (including where the five years falls after the exit). Those joining after Brexit will be subject to the same rules as those joining British citizens or alternatively to the post-exit immigration arrangements for EU citizens who arrive after the specified date.
- In a provision which will be helpful to individuals who have been in the United Kingdom mostly as self-sufficient persons and students, but have not been able to apply successfully for documentation confirming their permanent residence under European law because they have not held comprehensive health insurance ,they should be able to apply for "settled status" without holding such insurance.
- While all the EU nationals will need to make an application under British law for "settled status" or permission to remain in order to acquire "settled status" at the time of Brexit, this option will be made available sometime beforehand so that earlier, pre-Brexit applications will be able to be made. Furthermore,

the documents confirm that there will be no need for "cliff edge" applications to be made on or before the date of Brexit but specify that there will be a reasonable time period up to two years within which such applications can be made.

- ❖ With respect to EU nationals who already have a document certifying permanent residence under European law, their document confirming such permanent residence will not be automatically replaced with a grant of "settled status" but the Government indicates that they will seek to make the application process for "settled status" as streamlined as possible for those who already hold such documents.
- ❖ These proposals are without prejudice to Common Travel Area arrangements between the United Kingdom and Ireland and the rights of British and Irish citizens in each other's countries rooted in the Ireland Act 1949 which provide that Irish nationals in the United Kingdom are treated as already having indefinite leave to remain in the United Kingdom under British law.

- <u>Should you be making an application now for a document confirming your rights in the United Kingdom under European law</u>?

  - ❖ Until the Government made its announcement on 26 June 2017 of the proposed new system for EU nationals to acquire immigration rights under British law, most lawyers were advising that EU nationals exercising their automatic rights in the United Kingdom would be wise to apply for documentation confirming such rights in the hope that, under British law, such confirmation would be likely to have continuing legal effect post-Brexit. It now seems clear, however, that this will not be the case.

  - ❖ The documents in question would be a document confirming your permanent residence if you were a European national who had exercised your rights as an EU citizen for five years continuously, or a permanent residence certificate if you were a family member of such an individual. In the event that you hadn't "clocked up" five years but were a European national currently exercising your right to be here as an EU national in a qualifying capacity, you would apply for a registration certificate and, at the same time, any family members could apply for a five year residence card if they did not already have one.

  - ❖ The Home Office website has, for the last few months, included guidance for European nationals indicating that, while they should register their email addresses with the Home Office to get information updates, they need not make any application for the time being until receiving information from the Home Office regarding how they might apply in due course for "settled status" or a short term status leading to "settled status". It is more than likely that this position by the Home Office is largely an act of self-preservation, it not wanting to have a flood of two to three million potential applications being made by EU nationals in the United Kingdom now.

- Very clearly, there are situations, however, where it is imperative for an EU individual to apply for a document confirming their permanent residence:-

1. If you want to apply for British citizenship, since it is essential to have a document confirming permanent residence before naturalising as a British citizen.

2. If you now, prior to the implementation of the new "settled status" scheme, want to make an application under British law for a dependant to be granted leave to enter or remain in the United Kingdom under British law rather than European law.

3. The Home Office itself has now, effectively, acknowledged the need to apply if you fall into these two categories, as you will note on the cover page to the application form for a document certifying permanent residence attached to these notes, saying that a document confirming permanent residence is necessary if "you want to apply for British citizenship" or if "you want to sponsor your partner's application under the Immigration Rules" (which is one of only several categories where holding a document confirming permanent residence might be relevant to sponsor a dependant).

4. There is also a third category where, very clearly, there might be a clear benefit derived from applying for a document confirming permanent residence now. This is with respect to individuals who have already acquired permanent residence in the United Kingdom under European law but who, since then, for one reason or another, have not been living in the United Kingdom continuously. This could include, for example, a European family who have been living and working in the United Kingdom for more than five years and, therefore, have automatically acquired permanent residence but are then, for a period of time, transferred to another country because of the employment of one of the parents. Such individuals, under European law, would continue to hold permanent residence provided that they returned to the United Kingdom at least once in every two year period.

5. Another example of this would be the children of European nationals raised in this country for most of their lives and having acquired permanent residence as the dependants of their parents but who then, subsequently, have gone on to further education or to take up work positions abroad while still considering their family home to be here. Under European law, such individuals as well would also retain their permanent residence provided that they return home, e.g. to spend holidays with family, at least once every two years.

6. It is not at all clear, however, how such individuals who have already acquired permanent residence but who are at least temporarily living abroad will be treated under the scheme mooted by the Government which seems to be based on individuals actually residing in the United Kingdom for the last five years. One would hope that maintaining their permanent residence status in

this country would "count" for purposes of acquiring "residence status", but this is not certain. It seems clear that their positions would be reinforced, however, by obtaining documentation now confirming their permanent residence.

7. As regards the question as to whether people not in these exceptional categories should also now be applying for documentation confirming their permanent residence, lawyers disagree. On the one hand, you might be surprised to hear that lawyers do not want to be seen to be urging people to pay us substantial fees to help with applications which may need to be effectively re-made if "settled status" comes into effect as proposed by Theresa May's Government. On the other hand, we simply do not know what the procedure will be for acquiring "settled status". Logically, one would think that, having acquired a document confirming permanent residence, particularly in this two year period immediately prior to Brexit, would allow someone to make it much more streamlined and straightforward application for "settled status".

8. Indeed, the documentation issued on 26 June would seem to indicate that this would be the case when it states that "EU documents certifying permanent residence will not be automatically replaced with a grant of "settled status", but we will seek to make the application process for "settled status" as streamlined as possible for those who already hold such documents." One would think that the Home Office would effectively be being unnecessarily inefficient if they did not take into account a recent grant of a document confirming permanent residence when processing applications for "settled status". At the same time, no one can be sure or state categorically how much getting such a document confirming permanent residence will assist in the "settled status" process so, perhaps unusually for lawyers, we do not want to give the impression that we think it is necessary for people to get such documents and that they would be foolish not to prepare and lodge such applications now.

9. At the same time, the odds are that it will be better to have such a document than not when Brexit arrives and there are two to three million EU nationals simultaneously scrambling to apply for "settled status". In a way, one of the reasons for holding such meetings as this one is to de-mystify the process of applying for such a document and to demonstrate that it is not all that complicated or expensive to prepare and lodge such applications. Furthermore, if individual's work histories in the United Kingdom are straightforward, they may well be able to do this themselves.

10. It is probably the case, however, that lawyers are in agreement that, with respect to Europeans not yet qualifying for permanent residence, applying for a registration certificate is not a very important step for such an individual to take today. It is more important that individuals who will, in due course, be

applying for "settled status" keep good documentation about their work histories, proof of their living here, etc.

11. You will also note, later in these notes, that your having acquired permanent residence at some point in the past may have a very significant effect on the rights of your children. Children born in this country to European nationals who have automatically acquired permanent residence under European law are British nationals upon birth and entitled to a British passport, often without the family knowing it. Other children born in the United Kingdom will have acquired the right to apply to register as British citizens after a parent has automatically acquired permanent residence in this country. While, therefore, in such cases it is not absolutely necessary to apply for a document confirming permanent residence, at the very least it is worthwhile to go through the exercise of determining whether in fact you have automatically acquired this status.

12. As to whether it makes sense now to apply for a document confirming permanent residence if these particular situations do not apply to you, this is a topic about which lawyers themselves disagree.

Applying for a document confirming Permanent Residence
Making an application is no longer very difficult!

Assuming that you have taken the decision that you want to make an application for a document confirming your permanent residence, based on the guidance above, the good news is that this, in many cases, is no longer a complicated procedure. For a long time, many Europeans entitled to apply for a document confirming their permanent residence were put off the procedure because of the nearly one hundred page document which they needed to complete which even lawyers found very difficult to understand and use. Happily, however, there is now a simple online alternative. Filling out the online applications is a relatively straightforward process and you will receive a list after completing the online form explaining exactly what you need to submit to the Home Office and how to submit it.
Both options continue to exist and here are the links to the online application and the paper application:

1. Online application form for a permanent residence document: https://visas-immigration.service.gov.uk/product/eea-pr
   OR
2. Paper application form: https://www.gov.uk/government/publications/apply-for-a-document-certifying-permanent-residence-or-permanent-residence-card-form-eea-pr

Current guidance notes to help you fill out either version of the application form can be found here:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/506058/EEA_PR_guide-to-supporting-documents_v1_3_2015-12-04_KP.pdf

- Have you automatically acquired permanent residence?
  - If there has been a continuous five year period since you have come here during which you have exercised your rights as a European national, you probably have acquired permanent residence and can apply for a document confirming your permanent residence if you decide to do so.

- Defining "continuous": Short breaks in continuity are ok, e.g. a period of job-seeking for a few months. You must not have been out of the UK for more than a total of six months during any of the five years or for more than two years at a time after the five year period.

- Family members can apply with you if they have been here as your family members for a five year period.

- If you come from the Czech Republic, Estonia, Lithuania, Latvia, Hungary, Poland, Slovakia, and Slovenia, you may not be eligible to count time up to 30 April 2011 if you were a worker and did not register under the Workers Registration Scheme for the first year of your employment.

- If opting to use the online form, you can also opt to use the European Passport Return Service.
  This enables you to keep hold of your passport while your application is with the Home Office, as a local Register Office ("RO") will (for a small fee) take a certified photocopy of your passport and forward that onto the Home Office as part of your application package. To use the service, you need to do the following:

- Within a maximum of 5 days of submitting your online application form, attend a participating Register Office (a list of participating ROs in different London boroughs can be found here: https://www.gov.uk/government/publications/european-passport-return-service-greater-london/greater-london-nationality-checking-services).
- You may need to book an appointment at the relevant RO to use this service – contact them in advance of submitting your online application to check whether this is the case.
- You must take with you to the RO your entire application package, containing all supporting documents (including a printed copy of the application form you submitted online).
- You will need to pay a small fee (in the range of £10-£25) for the RO to make a certified photocopy of your passport.
- The RO then, having made a certified copy of your passport, will forward the whole package (including the copy of your passport) onto the Home Office on your behalf.
- You will have to pay a separate fee for Special Delivery postage, but you should then be given a tracking number to enable you to trace the package as it is sent to the Home Office.

Further information about the passport return service can be found here:
https://www.gov.uk/government/collections/european-passport-return-service

Registration certificate

While, as indicated above, there may not be much point in applying for a registration certificate now, given the imminence of Brexit, the application process for such a registration certificate is similar to that for a document confirming permanent residence. There are two ways to lodge such an application.

1. Online application for a registration certificate: https://visas-immigration.service.gov.uk/product/eea-qp
   OR

2. Paper application form : https://www.gov.uk/government/publications/apply-for-a-registration-certificate-as-a-qualified-person-form-eea-qp

Current guidance notes to help you fill out either version of the application form can be found here:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/506065/EEA_QP__guide-to-supporting-documents_v1_3_2015-12-04_KP.pdf
Again, if you want to keep your passport while the application is being considered you can use the passport return service described in the previous section. You can also, if you are an EEA national, apply for a registration certificate at a Priority Service Centre, and receive a same-day decision on your application.

Becoming a British Citizen

- The most fool proof way to protect your right to be in the UK is to naturalise as a British citizen.

- The law changed more than a year ago, however, to require European nationals to obtain a document confirming their permanent residence before they could become British citizens. So you must go through the process of obtaining such a document before you apply to naturalise. (See below, however, information regarding the special situation of children.)

- You also need to demonstrate that you have held permanent residence for at least one year before you can naturalise. Remember, however, that you may well have ***automatically*** acquired permanent residence a long time ago, when you completed five continuous years' of exercising your European rights.

- When you apply for a document confirming your permanent residence, you should therefore be sure to document the earliest five year qualifying period that you can. Then, when the Home Office issues your document confirming your permanent residence, it should specify the date on which you acquired permanent residence, which will be at the end of the five year qualifying period which you documented.

- The result may be that you will immediately be able to apply to naturalise upon receipt of the document confirming your permanent residence if that document shows that you in fact automatically acquired your permanent residence at least one year ago.

Benefits to your children if you have acquired permanent residence

You need to be aware that there may be special benefits to your children in asserting your entitlement to permanent residence.

- A child born in the United Kingdom to a parent who is British or "settled" at the date of the child's birth will be considered British by birth. "Settled" in this context means that the parent has indefinite leave to remain under British law contained in the United Kingdom's Immigration Rules, ***or has acquired the right of permanent residence under European law***.

- This means that, if you apply for a document confirming your permanent residence as of a certain date in the past when you had completed a continuous five year period of exercising European rights, any child or children you had after that date on which you had acquired permanent residence would automatically be British "by birth" under Section 1(1) of the British Nationality Act 1981. This means that such children can apply for a British passport straightaway. (Please note, however, that it is not mandatory for you to have been issued with the document confirming your permanent residence in order to take advantage of this rule but, instead, you could simply prove in the context of the application that you have exercised your European rights for a continuous five year period and have not been absent since then for more than two years at a time.)

- Furthermore, a child born in the United Kingdom to a parent who later becomes settled has an entitlement (i.e. an absolute right) to register as a British citizen under Section 1(3) of the British Nationality Act 1981, although such an application must be made while the child is still a minor. Because of this provision, if you are applying for documentation confirming your permanent residence before lodging this application to register your child as a British citizen, there is not really a need to include in the application for a document confirming your permanent residence your minor children as dependants since, as soon as you are issued with a document confirming your permanent residence, your children will be able to use that document to demonstrate that they have the right to register as British citizens, after which they will be entitled to British passports.

- Furthermore, a child born in the UK who has lived in the UK for the first ten years of their life is entitled to register as a British citizen under Section 1(4) of the British Nationality Act 1981. This entitlement exists independently of the immigration status of the parents. Unlike an application under Section 1(3), this application can be made by adults as well as children.

- Changes in the law over time mean that different rules may apply depending on when the child was born:

  - A child born in the United Kingdom before 2 October 2000 to an EEA national parent will be a British citizen if the parent was exercising treaty rights at the time of the child's birth. (There has been doubt cast on this by recent case law. If this applies to you or your child, please check the Passport Office guidance here before you apply: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/374616/TreatyRightsPolicy.pdf.);

  - A child born between 2 October 2000 and 30 April 2006 to an EEA national parent will be a British citizen if the parent had indefinite leave to remain in the UK at the time of the birth (indefinite leave under British being required since permanent residence under European law only became available after 30 April 2006); and

- A child born in the United Kingdom after 30 April 2006 will be a British citizen if their parent had been in the United Kingdom exercising Treaty rights for more than 5 years or has indefinite leave to remain.

Provisions affecting rough sleepers from the EEA

The UK Government made a series of amendments to the Immigration (European Economic Area) Regulations 2006 (The EEA Regulations), which took effect on 1 January 2014. Among the amendments introduced to the 2006 EEA Regulations on 1 January this year, are new regulations 20B and 21B. These powers seek to remove, bar from re-entry, and question Union citizens who are not (or are suspected of not) exercising a right to reside in the UK. Under the Regulations the Secretary of State for the Home Department now has the purported power to:

a. Remove an EEA national if he or she does not have, or ceases to have, a right to reside under the EEA Regulations (reg 19(3)(a))

b. Require EEA nationals to provide evidence or 'attend an interview' with the Secretary of State (reg 20B(2)) if he:

i. has 'reasonable doubt' as to whether that EEA national is exercising a right to reside in the UK (reg 20B(1)(a)) or

ii. wants to verify that EEA national's eligibility for residence documentation under the Regulations (reg 20B(1)(b));

c. Where a person purports to have a right to reside on the basis of a relationship with an EEA national, require that EEA national to provide information about the relationship or attend an interview with the Secretary of State (reg 20B(3)).

d. Draw 'factual inferences' about a person's right to reside if they fail to provide the requested information and/or fail on at least two occasions to attend an interview when requested by the Secretary of State (reg 20B(4))

e. On the basis (albeit not the sole basis) of such inferences, determine that the person in question does not have a right to reside under the regulations (reg 20B (4)).

f. Refuse to admit an EEA national to the UK, or remove that EEA national where 'there are reasonable grounds to suspect the abuse of a right to reside, and it is proportionate to do so', where the 'abuse of a right' includes:

'21B(1)...(b) attempting to enter the United Kingdom within 12 months of being removed pursuant to regulation 19(3)(a), where the person attempting to do so is unable to provide evidence that, upon re-entry to the United Kingdom ,the conditions for any right to reside, other than the initial right of residence under regulation 13 will be met'.

CRD 2004/38 makes no explicit provision for removal of EEA nationals on the ground that they do not (and previously did not) meet the conditions for residence. Indeed, the only grounds for restricting free movement of EEA nationals, explicitly laid out in the Directive, are public policy, public security and public health. Even then, measures taken on these grounds, are narrowly interpreted and must be made on a case-by-case basis, and comply

with the principle of proportionality. In each case, the individual must be shown to represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of the society of the host Member State. These grounds may not be relied upon to achieve an economic purpose (for example, restricting access to a job market), although the link between deportation and financial resources is more complex in reality and the lawfulness of economically grounded justifications are, potentially at least, lawful.

In the EEA Regulations, reg 19(3)(a) is presented as an alternative ground to removal on grounds of public policy, public security or public health (removal on these grounds is provided for by reg 19(3)(b)). This is the regulation used in the Home Office guidance to justify the removal of rough sleepers. Neither the EEA Regulations nor the accompanying guidance directs decision-makers to consider whether someone who falls within Regulation 19(3)(a) poses a present threat to public policy, public security or public health. This may make the regulation unlawful for a number of reasons, mainly as it is in direct contravention of Freedom of Movement.

THE HOSTILE ENVIRONMENT: KEY DEVELOPMENTS FROM THE IMMIGRATION ACT 2014 AND THE IMMIGRATION ACT 2016

BACKGROUND

2012: Home Secretary Theresa May announces her aim 'to create here in Britain a really hostile environment for illegal migration'.

Introduction of legal and administrative measures aimed at making everyday life increasingly difficult for migrants in the UK.

Affects not only irregular migrants but also those who cannot *prove* their status and those for whom the authorities hold incorrect data.

1. WORKING

Criminal offence to **work** in the UK without permission. 51 weeks' imprisonment and/or a fine.[1] Earnings from illegal working can be seized with a confiscation order, as proceeds of crime.[2]

Civil penalty for **employers** who fail to check the immigration status of an employee and employ a person without the right to work: up to £20,000 per worker.

Criminal offence for **employers** who know, or have reasonable cause to believe, they are employing a person 'disqualified from working' because of their immigration status. 5 years' imprisonment or an unlimited fine.[3]

Employers should check the employee's original documents, and retain copies of them, or if none are available then they must check with the Home Office whether an employee has the right to work. Further guidance for employers on Home Office website.[4]

Employers must not discriminate against an employee or potential employee on account of their race. The information the Home Office holds about potential employees must be accurate and up-to-date.

2. RENTING

People subject to immigration control who do not have the right to remain in the UK are disqualified from entering into most residential tenancy agreements.[5]

British, EEA and Swiss citizens, as well as settled migrants with Indefinite Leave to Remain in the UK, hold unlimited right to rent. All other migrants whose right to remain is limited, hold 'time-limited' right to rent.

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[1] Since 12 July 2016: s34 Immigration Act 2016
[2] s70 Proceeds of Crime Act 2002
[3] S35 Immigration Act 2016
[4] https://www.gov.uk/penalties-for-employing-illegal-workers
[5] Ss20 – 37 Immigration Act 2014

Those without the right to rent can be granted it on a discretionary basis by the Home Office[6] - this will also be treated as 'time-limited'.

Landlords and agents must carry out immigration checks on all adults who will occupy a property as their only or main home before entering into a residential tenancy agreement, in order to assess whether they have the right to rent. This applies to lodgers and private tenants in most types of residential accommodation.

The check involves checking original documents in the presence of the potential tenant, and making and retaining copies. For those with unlimited right to rent, this must be carried out in the 28 days before the tenancy begins. For those with a time-limited right to rent, there must be an initial check followed by another when their permission to remain in the UK expires, or after 12 months (whichever is the longer).

Evidence of the checks protect a landlord or agent from a civil penalty. If the landlord cannot confirm that a tenant continues to have the right to rent, they must notify the SSHD within a reasonable period of time. If an individual cannot provide the necessary documents, landlords can check with the Home Office's Landlords Checking Service online, which should provide a response within 48 hours.[7] Further guidance for landlords is also on the Home Office website.[8]

Landlords or agents who fail to adequately conduct the checks and who enter into a tenancy agreement with a person who does not have a Right to Rent, or fail to notify the Secretary of State if a tenant subsequently becomes disqualified, can be fined up to £3,000.

Now also criminal sanctions for landlords and agents if they know or have reasonable cause to believe that their premises are occupied by an adult who does not have the right to rent.[9] Up to 5 years' imprisonment.

Since 1 December 2016, landlords have a new power in certain circumstances to end tenancies where the property is occupied by a person or persons without the right to rent. This includes a power to end a tenancy without a court order where all occupants are without the right to rent and are named on a notice from the SSHD.[10] In brief, this allows landlords to serve a notice giving 28 days' notice of termination of tenancy, and then to evict the tenants after expiry of the notice as if there were a court order for that eviction.

It is unlawful for tenants to be checked – or to be refused a tenancy, or to be refused the checks themselves, or to be evicted - only because of their race, or because they 'don't seem British'. JCWI's research has already shown that foreigners and British citizens without passports, particularly those from ethnic minorities, are being discriminated against in the private rental housing market.[11]

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[6]Eg: asylum-seekers; those with outstanding appeal or Judicial Review; those on immigration bail; those cooperating with voluntary return; victims of trafficking or slavery; those for whom the Home Office considers their case will be better able to be progressed if they were granted permission to rent; vulnerable migrants; to avoid a breach of human rights.

[7]https://eforms.homeoffice.gov.uk/outreach/lcs-application.ofml

[8]https://www.gov.uk/penalties-illegal-renting

[9]Ss33A-33E Immigration Act 2014, as amended by s39 Immigration Act 2016

[10]S36D Immigration Act 2014, as amended by s40 Immigration Act 2016

[11]https://www.jcwi.org.uk/news-and-policy/passport-please

3. DRIVING

The Immigration Act 2014[12] restricts access to driving licenses for non-EEA nationals. Those without a license from an EEA or other designated country must show they have 6 months' leave to remain in the UK when applying for a licence.

DVLA now has the power to revoke a licence issued to a person who does not hold leave to remain. 259 licences were reinstated in 2015 after being wrongly revoked.

The Immigration Act 2016 introduced a power to enter and search premises for a driving licence if it is reasonably believed that a person who is not lawfully in the UK holds one.[13]

There is also a new criminal offence of driving when unlawfully in the UK, including the power to detain the vehicle. [14]

4. BANK ACCOUNTS

The Immigration Act 2014 prevents individuals from opening current accounts if they do not have permission to be in the UK.[15] Banks must check the immigration status of anyone opening a current account.

Under Immigration Act 2016,[16] banks and building societies will be required to check existing account holders if requested to do so, and to notify the SSHD if the person may be a 'disqualified person'. SSHD can then freeze the account or oblige the bank or building society to close it. Comes into force on 31 October 2017.

5. HEALTHCARE CHARGES AND DATA SHARING

Under a Memorandum of Understanding from January 2017, limited non-clinical patient data relating to 'immigration offenders' can be passed from the NHS to the Home Office. In practice, this means patient's addresses and contact details are available to the Home Office once entered onto the NHS database.

The NHS (Charges to Overseas Visitors) Regs 2017 came into effect on 21 August 2017 and 23 October 2017.

They **extend the secondary care settings in which charges can be made**. Obligation to charge for all secondary care outside hospital and GPs. Any organisation receiving NHS funding will be legally required to check every patient before providing services to see if they should be paying for their care. Includes health visitors, school nurses, CMHT, pregnancy termination services, district nursing, specialist services for homeless people, drugs and alcohol services, etc.

They also make **provision for up-front payment of *estimated* costs of treatment** for those liable for charges. This will apply for all chargeable treatment which is not urgent or immediately necessary.[17]

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[12] ss46-47 Immigration Act 2014

[13] s25CA Schedule 2 Immigation Act 1971, as amended by s43 Immigration Act 2016

[14] S24C and s24D Immigration Act 1971, as amended by S44 Immigration Act 2016

[15] Ss40-42 Immigration Act 2014

[16] Schedule 7 Immigration Act 2016, which adds s40A-40 H to Immigration Act 2014

[17] NB antenatal, birth and postnatal services are considered immediately necessary. Also any other relevant service that the treating clinician determines the recipient needs promptly to save his/her life; to prevent a condition from becoming immediately life-threatening or to prevent serious permanent damage from occurring)

They also require **immigration checks to be made and eligibility to be recorded on health care records**. Every hospital department in England required to check paperwork before treating patients. Pilots in 20 hospital trusts requiring 2 forms of ID before appointments. Regs require recording if patient not entitled to free NHS secondary care.

Some services free to all: GP, family planning, compulsory mental health care, communicable diseases, physical or mental health condition caused by torture, FGM, DV or sexual violence. Amended to include palliative care provided by CICs or charities. Still an obligation to check paperwork even if no charge for treatment.

6. SCHOOLS AND DATA SHARING

MoU between Home Office and Department of Education since June 2015:

> "Where it is suspected that an [immigration offence] has been, or is being committed, the DfE will [share] their data with the HO [Home Office] to assist in the process of identifying potential new contact details (including addresses) for the individual(s) and their family members."

Data collected though annual school census and collated in national pupil database. Includes pupils' names, recent addresses, school and some attendance records, including earliest and latest attendance dates.[18] Census is not compulsory.

7. MARRIAGE NOTIFICATION

Since 2 March 2015, the notification period for all proposed marriages and civil partnerships has been extended to 28 days. Those involving a non-EEA national with limited or no immigration status in the UK (unless exempt) must be referred to the Home Office. Where there are reasonable grounds to suspect that the marriage is a 'sham', the notice period can be extended to 70 days for investigation and appropriate enforcement or casework action.[19]

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23 October 2017

[18] https://www.theguardian.com/uk-news/2016/dec/15/pupil-data-shared-with-home-office-to-identify-illegal-migrants

[19] Part 4, Immigration Act 2014

in which case younger ADR move to the UK too. The sponsor was required to evidence they could afford to look after their ADR without recourse to public funds.

The current provisions were examined by the Court of Appeal in the Britcits case

http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/2017/368.html

The ADR must now be unable to dress or bathe themselves – therefore s/he must be elderly or severely disabled. Healthy ADRs will simply not be given entry clearance to the UK under Appendix FM. The government has justified these rules as a way to protect the NHS. Suggestions of ADRs having private health insurance, or for sponsors to provide a financial guarantee that their ADR won't become a burden on the state were disregarded.

Additionally, even where the ADR is so physically infirm that they can't bathe or dress themselves (making long-haul flights particularly challenging in any event) Applicants must show there is no one in the home country who can reasonably provide care instead of the UK sponsor. This includes 1) other children and grandchildren 2) siblings or other family 3) neighbours 4) help - paid or unpaid, by sponsor, ADR or the government in the ADR's home country) 5) old people's homes.

And if the above are satisfied, then the sponsor must also evidence and sign an undertaking that they and the applicant together have the means to pay for the ADR's care, accommodation and maintenance in the UK without recourse to public funds, but those funds are not sufficient in the ADR's country.

MOST COMMON FAMILY APPLICATIONS

The main family provisions can be found in Part 8 of the Immigration Rules (https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-8-family-members)

SPOUSES, CIVIL PARTNERS, UNMARRIED PARTNERS

Unless the Sponsor is in receipt of disability benefits, Applicants seeking leave to remain/enter in this category will have to comply with the provisions of Appendix FM (https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-fm-family-members).

Appendix FM makes a distinction between suitability and eligibility requirements. Broadly speaking the suitability requirements relate to the conduct of the applicant. Those with criminal convictions or who have been found to attempt to frustrate the Immigration Rules in the past could have their applications refused on suitability grounds.

If the suitability requirements are met, applicants would have to fulfil the following eligibility requirements:

1. The parties have met;
2. The Sponsor must either be British, have Indefinite Leave to Remain, be a refugee or have Humanitarian Protection;
3. They are either married, in a civil partnership or have cohabited for 24 months if applying under unmarried partners provisions;
4. This relationship needs to be genuine and subsisting;
5. They are able to meet the financial requirement (see below);
6. They have the right type of entry clearance.

Financial requirement

This can be met through employment, self-employment, savings and other income. Some of these elements can be combined. The guidance on financial requirement is extremely complex and can be found here https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/636618/Appendix_FM_1_7_Financial_Requirement_Final.pdf

The financial threshold for these applications requires that the Sponsor earns a minimum of £18,600. If children are applying at the same time, an additional £3,800 will be added to the threshold. For each additional child £2,400 will be added to the amount needed to be met by the Sponsor. The Sponsor must have had had in employment for at least 6 months. If applying on the basis of self-employment this is increased to 1 year.

Following the Supreme Court decision in *MM (Lebanon)* (https://www.supremecourt.uk/cases/uksc-2015-0011.html handed down on 22.2.2017 the UKVI has been forced to exercise some flexibility in cases involving children.

ADULT DEPENDANT RELATIVES (ADR) USUALLY PARENTS AND GRANDPARENTS

This provision was made virtually impossible since July 2012. The rules pre 9th July 2012 allowed for sponsorship of those ADR who were aged 65 or over and were financially dependent on the sponsor, unless there were exceptionally compassionate circumstances,

HOW TO MAKE AN EFFECTIVE REFERRAL TO AN IMMIGRATION SOLICITOR

AVAILABILITY OF LEGAL AID

Legal Aid, Sentencing and Punishment of Offenders Act 2012 – *LASPO* - removed most categories of immigration law from the scope of legal aid.

The main categories of immigration/asylum law which are still covered:

- Asylum
- Trafficking (once there is a positive reasonable grounds decision)
- Domestic violence
- Judicial review

Exceptional Case Funding –

Sometimes people can get legal aid even though their case is not in the scope of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). This is known as **exceptional case funding** (ECF). An ECF team within the Legal Aid Agency (LAA) deals with these cases

To qualify for ECF, you must meet the ECF criteria as set out in LASPO and described in the Lord Chancellor's funding guidance. You must also be financially eligible for legal aid and your case must meet the merits criteria to qualify

Legal Aid providers can apply on behalf of client, or client can also apply directly for ECF – by filling in and submitting form CIV ECF1

As a summary, the application needs to include:

1. Background to case, including all the main facts.
2. What client needs legal advice on or what court proceedings they need representation in. Explain why client cannot represent themself.
3. What outcome client wishes to achieve.
4. Information that will support the application eg court applications and orders, expert and medical reports, copies of any decisions client wishes to challenge.
5. Information on client's financial situation.

In our experience, ECF is more likely to be granted at appeal rather than application stage.

Unfortunately, we are very limited in the amount of ECF cases we can take on, as the funding on all the work in preparing the application is at risk until the application is granted. We are receptive to taking on the right cases, but we must be selective, due to the financial risks involved.

We would be more likely to take on a case if ECF is already in place, than a case where ECF needs to be applied for.

ELIGIBILITY

Client must be financially eligible for legal aid and your case must meet the merits criteria to qualify for legal aid

Means testing is required to assess financial eligibility. You must assess a client's income and capital.

Very complex area, cannot cover every aspect of financial eligibility here – these are the key points:

The period of calculation when determining income is the calendar month up to and including the date of the application for legal aid.

Passported through the gross income and disposable income test if in receipt of:

- Income Support;
- Income-Based Job Seeker's Allowance;
- Income-Related Employment and Support Allowance;
- Guarantee Credit;
- Universal Credit;
- NASS

Otherwise, we would need to carry out full means assessment – capital and income

Disposable capital not to exceed £3,000 or £8,000 [depending on the type of legal aid]

Gross income not to exceed £2,657 per month (*Additional gross income cap for those with more than four dependent children). Disposable income not to exceed £733 per month

There are deductions for dependents, rent, employment expenses, etc

Resources of the client's partner must be taken into account and added to those of the client. Partner is defined as: (i) an individual's spouse or civil partner, from whom the individual is not separated due to a breakdown in the relationship which is likely to be permanent; (ii) a person with whom the individual lives as a couple; or (iii) a person with whom the individual ordinarily lives as a couple, from whom they are not separated due to a breakdown in the relationship which is likely to be permanent.

PROOF OF MEANS

The following information and evidence will greatly assist us in carrying out a full means assessment and will make it more likely that we would be able to take the case on under legal aid (we would also need all this evidence for client's partner, if relevant (see above)):

- Number of dependents of client – children (and their ages) and partner
- Rent/mortgage repayments paid per month (with evidence)
- Letters dated within 6 months confirming ***all*** the benefits client is receiving
- Evidence of any other income – such as payslips (preferably covering the period of the last 3 months)

- Bank statements (preferably covering the period of the last 3 months)
- Statement from friend/family member who is supporting client detailing support provided and when support started.

KEY DOCUMENTS

- Evidence of means (above)
- Summary of client's case to include, where possible: nationality, background, immigration history, reasons for wishing to remain in the UK
- Home Office decisions
- Court determinations
- Home Office interviews

TIME LIMITS

- 14 days to appeal
- 3 months to bring a judicial review