



British Embassy
Warsaw

Joachim Brudziński
Minister of the Interior and Administration
Ministry of Interior and Administration
Ul. Stefana Batorego 5
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Warsaw, 21 January 2019

Dear Minister Brudziński,

I write following the publication of draft legislation concerning the residency rights of UK nationals in the event of a 'no deal' scenario (ustawa o zasadach pobytu na terytorium Rzeczypospolitej Polskiej obywateli Zjednoczonego Królestwa Wielkiej Brytanii i Irlandii Północnej oraz członków ich rodzin w związku z wystąpieniem tego państwa z Unii Europejskiej i Europejskiej Wspólnoty Energii Atomowej) and the opening of a consultation on the terms of that draft legislation.

The UK government is grateful that Poland was one of the first Member States to announce its intention to ensure UK nationals who have made Poland their home would be able to stay on the basis of reciprocity even in the event of a 'no deal' scenario. The statement by Prime Minister Morawiecki and subsequent statements by members of the Polish government were welcomed by my Prime Minister and well received by the British community in Poland.

The United Kingdom has published its own policy paper to give assurance to EU citizens (including Polish nationals) living in the UK that they are also welcome and that we want them to stay. I attach a copy for your reference.

We have reviewed the proposed Polish legislation with preliminary legal guidance and we are pleased that the draft legislation provides a positive step to securing the rights of UK nationals and their family members.

We are keen to ensure that the respective offers from the UK and Poland are defined on the basis of reciprocity and therefore wish to highlight some areas in which the Polish offer to UK nationals living in Poland does not appear to match that of the UK offer to Polish nationals living in the UK and seek amendment to the provisions:

1. We are concerned to ensure UK nationals (and their family members) who do not hold a valid certificate confirming registration of an EU citizen's residence or a valid document confirming the right of permanent residence issued prior to 29 March 2019 will not be precluded from making an application for a permit for temporary or permanent residence under the new scheme. We

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seek assurance that if the applicant can provide **other forms of evidence** demonstrating that they had a right of residence or permanent residence before 29 March 2019, that this will be acceptable to the caseworker processing the application. This will be the case for Polish citizens in the UK.

2. It feels unclear when assessing the entitlement to a permanent residence permit based on art. 11 of the draft Act, what **periods of absence** would be considered acceptable. We worry that the rule 'all absences from Poland must not total more than 10 months in aggregate' would apply. The UK's proposed settlement scheme for EU nationals would not put such restrictions in place for Polish nationals (both qualifying in the immediate and the long term) and we seek the same for UK nationals. Under the UK proposal, five years' continuous residence means that for 5 years in a row the EU national has been in the UK for at least 6 months in any 12 month period, except for:
 - one period of up to 12 months for an important reason (e.g. childbirth, serious illness, study, vocational training or an overseas work posting);
 - compulsory military service of any length.
3. We are concerned that if a UK national is successful in their application for a 3 year temporary residence permit under the new provisions, but has **not accrued 5 year residence in Poland by the expiry of this permit** (or indeed only qualified with 5 years continuous residence after 31 March 2020), they would default to ordinary third country national rules. If this were the case the UK national would be seriously disadvantaged in the long term because it would appear additional restrictions would apply, for example they might require a work permit to continue to work in Poland. Such restrictions do not exist under the UK offer to EU nationals. Our offer sets out that the applicant would receive temporary residence (called 'pre-settled status') for 5 years, and the applicant would then be able to convert this status to 'settled status' (permanent residence) once five years' continuous residence was demonstrated. In addition, it would be unfair if this specific group of UK nationals and their family members were subjected to the 'no more than 10 month in aggregate absence' rule to qualify for permanent residence (for the same reasons given in point two above). We seek amendment to reflect the special position of UK nationals and their family members.
4. The UK offer holds a provision for **close family members** of EU nationals with settled status to join their family member in the UK until 29 March 2022 (where the relationship existed prior to 29 March 2019 or where a child is born overseas after this date). **Future partners and spouses** (where the relationship existed after 29 March 2019) and dependent relatives will be able to join the EU citizen with settled status until 31 December 2020. We have not identified any similar proposition for the family members of UK nationals in the draft legislation and seek additional provisions for these family members.



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5. The UK offer to EU nationals is the ability to make an application under the settlement scheme until 31 December 2020 but we note that the offer to UK nationals within the draft Act is more limited with a **closing date of 31 March 2020**. A longer window for applications would be particularly important for any applicant who makes an application, is refused and exhausts the appeal process. Depending on the length of the appeal process, the window of opportunity for a new application may lapse while awaiting the outcome of the appeal. We encourage you to extend the latest date of application.
6. We seek assurance that there would not be a requirement to demonstrate knowledge of the **Polish language** to qualify for permanent residence. The UK offer to Polish nationals and their family members does not include an English language requirement.
7. We seek clarification that the stamp placed in the UK national or their family's passport pending completion of their application under the scheme would **permit exit and re-entry to Poland**. The proposed legislation does not set service standards for processing applications and while we appreciate the extra resource Poland is recruiting to process these applications, we would not want to see UK citizens unable to leave Poland for an excessive period of time.
8. We are keen to better understand the appeal procedure for a refused application and seek assurance that the UK national or their family member would be **permitted to remain (and work or study) in Poland during the appeal process**.

Minister, the requests made above are solely in the spirit of reciprocity, seeking to ensure the offer to UK nationals and their family members residing in Poland mirrors the offer to Polish nationals and their family members residing in the UK.

In closing, we look forward to working with your officials in the coming days on these pressing issues and I re-affirm our offer to work together with your Ministry to help communicate the terms of the final legislation to UK nationals in Poland.

Yours sincerely,

A handwritten signature in blue ink that reads "Jonathan Knott".

Jonathan Knott

CC: Minister of Foreign Affairs Jacek Czaputowicz, Secretary of State for European Affairs Konrad Szymański, Natalia Bank (MSWiA), Małgorzata Kałużyńska (MSZ), Natalia Jaworska-Dębska (MSZ), Iwona Zemanek-Rochalska (UDSC), Marek Russjan (MSWiA)