

The AIRE Centre UK Nationals Support Fund – Written evidence (CIT0002)

We would like to thank you for inviting the EuroBrits project of the AIRE Centre to submit evidence regarding the implementation of the Withdrawal and Separation Agreements with respect to UK nationals' residence rights in Bulgaria, Greece, and Norway. The circumstances UK nationals have to face, and the bureaucratic systems and cultures, are unique to each of our countries and, for this reason, we will address each theme/subject specifically for each country, unless otherwise indicated.

The AIRE Centre has two teams working in this area of Post Brexit European citizens' rights - one working on EUSS and one on UKNSF. The evidence provided here relates only to our UKNSF work. The team working on EUSS is submitting its evidence separately.

General introduction to our work

The AIRE Centre is a legal charity based in London since 1992. Its new sister organisation AIRE Ireland is based in the Republic of Ireland. For 30 years the AIRE Centre has provided expert advice across Europe on European law including *inter alia* the rights of individuals under the provisions of EU free movement law - and related EU law on matters such as e.g. health care, recognition of qualifications, and where applicable welfare benefits. We have also litigated these matters in both national courts and the CJEU. We have trained lawyers, judges and public officials across Europe on many areas of European law including EU free movement law.

We are one of the Implementing Organisations of the UKNSF. We are now working in Bulgaria, Greece, and Norway. We initially also worked in Iceland. That support was discontinued in March 2021 as it was felt there was insufficient need.

These countries were selected by the FCO (as it then was) for us to work in from a wider group of countries which we had originally proposed for our work. We had lawyers on the AIRE Centre team who were already familiar with the law and the administrative bureaucracies on the ground, including some who had previously worked in national immigration services, and who spoke the relevant languages in those countries. We particularly hoped to provide a service to the UKNs' living in countries other than France, Spain, Germany, and the Netherlands which already seemed to be well served by big intergovernmental organisations such as IOM and some dedicated NGO's. We felt in particular that the consequences of Brexit for UKNs in the non-EU EEA countries had been overlooked. Our colleagues in the UK had already been working on the EUSS scheme.

Our motive in taking on this work was to alleviate the plight of UK nationals in Europe who found themselves in a state of uncertainty over their future status in the countries they had made their homes – in many cases long before Brexit was contemplated.

Background to the UKNSF scheme

The FCO (as it then was) decided in 2019 to launch the UKNSF scheme in parallel to the Home Office's EUSS scheme. Much of the original scheme was copied from the EUSS with the result that some improbable categories were included such as UKN victims of trafficking in Europe. (They may well exist but we have yet to meet one in any of our work.) The scheme was intended to assist vulnerable individuals who would be unable - unassisted - to regularise their situation under what would become the Withdrawal Agreement (WA) in the case of the EU and the Separation Agreement (SA) in the case of the non-EU EFTA countries.

The UKNSF scheme was/is somewhat restricted in its scope being limited to offering assistance (a) only to "the vulnerable" and (b) only in relation to the securing of residence rights. This created certain reputational risks for the FCO as many UKNs felt that they should be able to access our FCO funded services to help them to resolve their complex post Brexit situations even though we were not supposed to help them under the scheme as we could not classify them as vulnerable. As will be detailed below we have been able to assist many "vulnerable" people and we have approached the concept of vulnerability with what we consider to be appropriate flexibility.

It was also somewhat frustrating for us to have to tell UKNs that we were not to answer, directly, their questions about health care, pensions, and other ancillary matters (irrespective of whether we knew the answers) as this was outside the scope of the scheme which was limited exclusively to assistance with securing residence rights. Although we were permitted to take up individual problems establishing residence with the relevant local aliens offices, we were unable to take these issues further when the problem was systemic or emanated from higher up the national bureaucracy, or even from inappropriate or unlawful secondary legislation. Nor could we take matters up with the European Commission or the EFTA Surveillance Authority - which would have been our normal practice. Within those constraints, we have provided tailored personal assistance to individual UKNs in all our countries - a service which the Embassies could not provide.

Our methodology: our work is overseen by the Project Director, the AIRE Centre's Senior Lawyer, Nuala Mole and the day to day co-ordination of the work is carried out by the Project Co-ordinator lawyers, first Niamh Grahame and now Myrto Stavridi. Our team in each country includes a national legal advisor and a project assistant. A volunteer intern is also attached to the work. We have a telephone advice line in Greece and Bulgaria available for 9 hours per week and a dedicated email for enquiries and requests for assistance.

We have received more than 500 requests for assistance for Greece, 67 requests for assistance for Norway and 82 requests for assistance for Bulgaria. All of these requests require(d) an answer either through the form of a virtual or face to face appointment or in the form of a personalised letter of assistance with details on their rights and obligations under the WA and the SA and how to apply for a residence permit. We have also replied to 803 simple queries (which did not require a letter of assistance) relating to all of the countries we have

provided our services. We have also produced more than 20 information sheets for Bulgaria, Greece, Iceland, and Norway and have held 5 webinars for Bulgaria and Norway.

Our working relationships with all the local British Embassies grew as the project evolved into the pattern of co-operation we now have. The intended relationship between the differing roles of the Embassies and the Implementing Organisations, and their interrelationship in serving UKNs' rights, was not set out at the beginning of the project as clearly as it might have been. (As we note below, due to the fact that the project was entering previously uncharted territory, this is understandable.) The appreciation of this relationship differed significantly from post to post and we were sometimes unsure whether a post's understanding of our complementary roles coincided with ours. Happily, as the project progressed we have now been able to establish regular catchup meetings with all posts to ensure that we keep each other informed and we have together developed a useful and co-operative relationship with all posts. We very much appreciate their courteous co-operation and the efforts they are making to ensure respect for the rights of UKNs in their respective countries.

Assessment of the implementation of the citizens' rights provisions Declaratory and constitutive systems

Under the Withdrawal Agreement (WA) and the Separation Agreement(SA), states have the ability to choose between two different systems of conferring rights on UK nationals, namely the declaratory and the constitutive system. In the declaratory system, citizens' rights are directly conferred on UK nationals by the WA and SA agreements themselves. In the constitutive system, citizens' rights are conferred by the national authorities when UK nationals apply and obtain their residence permits.

Bulgaria and Greece have opted for the declaratory system under Art. 18 paragraph 4 of the WA. This means that UK national beneficiaries of the WA in these countries are not obliged to obtain a residence permit under the WA in order to enjoy their rights. However, in practice, they have to obtain these new residence permits as without them they experience difficulties accessing public services and travelling to and from the respective EU MS.

As far as we have been able to ascertain from national websites, the EFTA Surveillance Authority of our own Norwegian legal expert, Norway has not *expressly* opted for either system but appears to be considering that those who do not apply for the relevant residence permits and cards by the deadline set will no longer benefit from the SA.

Vulnerable UK nationals

Bulgaria: While Bulgaria has put a procedure in place for vulnerable UK nationals who cannot visit the migration offices in person due to illness, disability or other reasons, we have not encountered any such case as of yet in order to verify how this procedure would work in practice. UK nationals who are beneficiaries of the WA and who do not speak Bulgarian experience difficulties in communicating with the local migration officials and we have been informed of a number of cases where they were turned away either without an explanation as to why or

without an explanation as to how to solve their particular problem (ie which document was missing or whether they should submit an application for a new residence permit and not for the renewal of their EU residence permit). Their applications are not registered and they do not have a reasoned decision which they can appeal.

The central authorities (MoI) are helpful, however, there are still a number of systemic problems. The authorities have not found an umbrella solution to the problems faced by UK nationals who last entered Bulgaria in 2021. Another misinterpretation of the Withdrawal Agreement relates to UK nationals who have acquired the right of permanent residence but have not held an EU long-term residence permit for a total period of 5 years. The Bulgarian authorities do not consider that these UK nationals have acquired the right of permanent residence, despite their position in EU law being clear. The Bulgarian authorities erroneously consider that holding an EU long-term residence document is a mandatory requirement to benefit from EU/WA permanent residence rights. Some local authorities are also hesitant to recognise durable partners as beneficiaries of the Withdrawal Agreement. Durable partners are unmarried and unregistered (i.e. have not entered into a civil union) couples who live together in a stable and continuous way. Durable partners are protected under Art. 3 paragraph 2 (b) of the Directive 2004/38/EC on freedom of movement and Art. 10 paragraph 4 of the WA. Last but not least, the Bulgarian authorities have not provided a solution for the problem of absences related to Covid-19 restrictions on movement to and from Bulgarian territory of UK nationals who have not acquired the right to permanently reside in the country and have been absent for more than 6 months but less than 12 months.

Greece: While Greece has set a procedure in place for vulnerable UK nationals who cannot visit the migration offices in person due to illness, disability or other reasons (e.g. dependent children with disabilities), local police authorities are reluctant to set it in motion when necessary. Solutions are usually found on an *ad hoc* basis after extensive communication with the local competent authority and are dependent on the "good will" of each competent officer.

An illustrative example was one of our cases where UK national parents and their son who is autistic and suffers from right-sided hemiplegia requested our assistance to obtain his biometric residence permit. Their son who receives Personal Independence Payment (PIP) was unable to speak to people he did not know as he became frightened and could not interact with them. Normally, the son (who is not a minor) would have to submit the application himself or authorise his parent(s) to submit the application on his behalf. This authorisation has to be signed before a public authority. After our intervention, the competent officer was willing to forgo the requirement of certification of signature (so that the son did not have to attend a public authority given his extreme reactions to strangers) and requested solely the UK documents which verified that the mother was the primary carer of her son and in receipt of Carer's Allowance.

Another case we are currently working on has to do with a very elderly bedridden UK national who has acquired the right of permanent residence in Greece. Her son has travelled to Greece to help her as her husband/his father has passed away. He contacted us and requested our help. We are communicating with the local authorities to arrange a house visit for her.

However, we first have to solve the problem of renewing her UK passport. As she is bedridden, her son cannot take a correct passport-type photograph of his mother on his own. Our clients are located in a small village in the northern part of Greece so we are trying to work out a solution for her with the local social services. If this cannot be arranged, we will travel to her in order to help the son take an appropriate passport-type photograph.

In general, UK national beneficiaries of the WA who do not speak Greek experience difficulties in communicating with the local police and there have been cases where they were turned away without their application being registered. As their applications were not officially submitted, they do not have a reasoned decision to appeal. The police officer within the central police authority who oversees the implementation of the Withdrawal Agreement has been very co-operative and has helped us solve many cases where local officials have misinterpreted or misapplied the WA.

Lastly, many UK nationals in Greece reside on islands and the issuance of biometric residence permits under the WA has been entrusted to the police authorities located at the capital island of each island complex. This means that many UK nationals have to travel 2 or 3 times to a different island and, as sea transportation has been particularly affected by national Covid-19 related restrictions on movement, UK nationals may have to stay overnight and incur costly expenses.

With respect to Greece, we cannot accurately estimate the progress of applications for the new residence permits in relation to the UK population living in Greece. Most UK nationals, including property owners, did not obtain an EU residence document as, although technically required, it was not necessary for the exercise of their rights. This means that the estimated number of UK nationals in Greece may well still be seriously underestimated.

Norway: The new residence permits were introduced in January 2021 and initially, there was significant confusion surrounding them. We are not aware of a special procedure applicable to UK nationals who may be too ill or incapacitated to visit the relevant authorities in person.

The Norwegian government very recently issued a circular relating to the problem of absences resulting from the very strict rules Norway enforced with respect to entering the country during the Covid-19 pandemic. This circular is under review by our Norwegian legal expert and we hope it will help UK nationals who have not acquired the right to permanently reside in the country and have been absent for more than 6 months but less than 12 months. There was also a problem with residence cards which were misprinted under the Brexit regulations and then sent out which has yet to be resolved.

Another issue to be determined, and which affects the exercise of UK nationals' rights, has to do with the date upon which an application for a biometric residence permit is considered as submitted. It appears that the local authorities consider an application as submitted not when the application is submitted through the relevant online portal but only when all supporting documents have been received. However, the police may require extra documents in certain cases and the email they send to UK nationals requesting such supplementary

documentation may be severely delayed due to the limited capacity of the Norwegian police.

Information campaigns by local authorities addressed to UK nationals

Bulgaria, Greece, and Norway: As far as we are aware there have been no information campaigns by local authorities *other than in the digital space*. UK nationals can find information available in English on the websites of the respective authorities. The relevant websites of Norway and Greece provide comprehensive information, although they can be somewhat confusing, while the relevant website of the Bulgarian authorities is rather basic and brief. We are aware of joint efforts by the respective Embassies and local authorities aimed at the dissemination of leaflets and brochures in migration offices or other public authorities. However, as far as we are aware, these have not been implemented yet. Greek authorities held a joint Q&A session with the Embassy in Athens on 4 June 2021 which was live-streamed on Facebook. Greece has also undertaken to disseminate short videos on TV and the social media of public authorities.

EU residence documents as proof of move to EEA/EU Member State prior to the end of the transition period

Bulgaria, Greece, and Norway: In general, EU residence documents are accepted as proof of move to the respective country by 31 December 2021. However, in Greece there have been instances where local authorities have inappropriately requested extra documents. In addition, in Bulgaria where an EU residence document expired before the UK national was able to apply for its renewal under the Withdrawal Agreement, in our experience, the local authorities have tended to turn away the applicant rather than register the application for renewal as an application for a new residence permit under the Withdrawal Agreement. We are still working on these cases.

Impact of Covid-19 on citizens' rights and registration procedures

We originally intended to hold information and assistance events – “clinics” – on the ground in the areas where we knew there were significant numbers of UKNs and to publicise these in advance for maximum impact and attendance. We had links with UKNs who were resident in Bulgaria and Greece on which we would build this work. Covid-19 restrictions both on travelling from the UK to our designated countries and on movement within the countries for our experts already present there meant that in person events could not be held with two exceptions, one event in Iceland and one event in Greece. Covid-19 also resulted in many Government departments grinding either to a halt or near snail's pace and long delays remain in that tailback. We have primarily conducted our outreach work by holding webinars and Facebook Q&A sessions which have been - and continue to be - very successful, well attended and much appreciated by the UKN's. (We held one such webinar for Norway this week) We have also sent emails to professional organisations, public services and private business which may have relations to the UK national population. In all countries complications have arisen because of Covid-19 related travel restrictions. UK nationals are now having to deal with the problem of reconciling these complications with timelines which had been set in the pre-pandemic era.

Bulgaria: In Bulgaria, the validity of residence permits that were to expire between 13 March 2020 and 31 January 2021 was automatically extended due to the impact of Covid-19 to registration procedures. Fear of Covid-19 has also discouraged many elderly and/or vulnerable UK nationals from attending the relevant offices to apply for a residence permit. Covid-19 restrictions have also hindered travels from the UK to Bulgaria and many beneficiaries of the WA who tried to enter Bulgaria in early 2021 were refused entry unless they already held an EU residence document. UK national beneficiaries of the WA who entered, or managed to enter with the help of the Embassy, faced problems when they applied for residence permits under the WA due to the fact to their last entry in Bulgaria was in 2021 and not 2020.

Greece: UK nationals in certain areas throughout Greece, for example Crete and Corfu, are finding that the earliest available dates for registration appointments are well into November and December 2021 due to the limited capacity of the police. We are concerned that without our assistance any difficulties that are generated during these late appointments will not be able to be ironed out. Initially most UK nationals without a new residence permit experienced significant difficulties in exercising their rights, including their rights to health-care (ie they were not able to register their S1 forms, be issued with social security number – necessary for Covid-19 vaccination or access benefits). Some of these issues were recently resolved. However, for non-UK state pensioners who do not work in Greece and have not yet obtained a biometric residence permit, access to Covid-19 vaccination has proven particularly difficult. It would have been beneficial if under the UKNSF we were able to provide health care advice, particularly with respect to Covid-19 vaccination and hospitalisation procedures. Fear of Covid-19 also discouraged many elderly and/or vulnerable UK nationals from attending the relevant offices to apply for a residence permit.

Norway: The main problem relates to the unavailability of appointments with the police, a necessary step in order for a UK national to obtain a residence permit. In May one of our clients only managed to book an appointment with the police for 12 December 2021. However, this will depend on local availability. We are concerned that without our assistance any difficulties that are generated during these late appointments will not be able to be ironed out. Another problem relates to the very strict entry rules Norway enforced during Covid-19 restrictions which meant that many UK nationals who are beneficiaries of the WA were trapped in the UK and could not return to Norway as required.

Deadline

Bulgaria: Bulgaria has set a deadline for applications under the WA. UK nationals must apply by 31 December 2021. This deadline should be indicative (not a cut-off deadline) as Bulgaria has opted for the declaratory system under Art. 18 paragraph 4 of the WA. Therefore, the rights of UK national beneficiaries of the WA stem from the WA itself and the fact that they satisfy the relevant conditions. Their rights are not created by obtaining a residence permit (as opposed under the constitutive systems under the WA). In declaratory systems, residence permits only act as proof of the WA beneficiary status- they do not confer it. However, we do not have official confirmation yet that UK nationals will be able to apply after this deadline and we have not been assured that missing this deadline will have no effect on UK nationals' rights under the WA.

Greece: Greece has set a deadline for applications under the WA. UK nationals must apply by 30 June 2021. However, the Greek authorities clarified early on that this is an indicative deadline (see above in relation to Bulgaria) and that UK nationals can apply for a residence permit from July 2021 onwards. As that deadline is approaching we are receiving more and more queries relating to this somewhat confusing issue.

Norway: Norway has set a deadline for applications under the Separation Agreement. UK nationals must apply by 31 December 2021. The Norwegian authorities have indicated that they would be disposed towards flexibility on this. However, we do not have an official confirmation yet that the deadline will be extended.

Our assessment of the support available to UK nationals from the UK government

In terms of communications

Bulgaria, Greece, and Norway: All the Embassies in the respective countries in which we are currently providing our services held face to face meetings before the pandemic began and have subsequently held some virtual outreach events and some face to face events with small groups of UK nationals. We are aware of plans for holding more virtual outreach events in the future.

In terms of FO funding

The FCO funding and the establishment of the scheme was essential to reassure UKNs that they had not been wholly abandoned after Brexit. The scheme was devised and set up in previously uncharted territory and in the context of a general absence of statistical data about the presence of "resident" UKNs in Europe. This presented a considerable challenge and one which was intrinsically different from the challenges presented by setting up the EUSS.

It was ably co-ordinated from London by Colin Barrett who regularly brought together all the Implementing Organisations to share and compare experiences particularly in reaching the "hard-to-reach". As a consequence of the Covid-19 pandemic and the resulting frequently shifting sands of restrictions on freedom of movement, the roll out of the scheme had to be constantly revised.

In addition, there was no certainty for several months that the scheme would be prolonged after March 2021 which made planning very difficult and resulted in us losing some key personnel. The scheme is at present supposed to end in September 2021 but we are concerned that the national delays described above means that there will continue to be a need of our services after that date.

None of us initially imagined that the holding of in person events would not only have to be postponed but ultimately abandoned, although at the time of writing this may no longer be the case. However our current funding does not foresee covering such events. But both Covid-19 and the timelines have meant that those who have rights under the WA and SA may not be able to find the security of residence they seek - and which is theirs under those agreements - for some considerable time to come.

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