



An amnesty for illegal migrants?

Illegal Immigration: MW 463

Summary

1. An amnesty for illegal immigrants would be a serious mistake. It would reward illegal behaviour and be grossly unfair to migrants who take the time and care to go through the proper channels. Such a scheme would also likely be extremely expensive for the UK taxpayer. Furthermore, the UK and other countries' experience of past amnesties shows that *they do not work*. Tackling the issue of illegal immigration, which 77% of the public see as a serious problem, requires much greater investment in enforcement and a major increase in removals rather than the short-term quick 'fix' that amnesties are wrongly seen as delivering. Meanwhile, routes that allow those with no right to be here to '*regularise*' their status should be urgently closed as they only encourage more illegal immigration and reinforce the damaging perception of the UK as a soft touch.

Estimate of the numbers involved

2. Illegal immigration is by nature clandestine and thus difficult to quantify. The Home Office (HO) estimated that in 2001 the population of illegal immigrants in the UK was approximately 430,000, excluding the UK-born children of illegal immigrants.¹

3. A further report, written by the London School of Economics, estimated that in 2007 the number of 'irregular' migrants was 533,000, although the main estimate was 617,000 if children born in the UK to irregular migrant couples were included.²

4. Migration Watch UK estimated the illegal migrant population to be around 1.1 million in 2010. Rob Whiteman, a former head of the UK Border Agency, estimated in mid-2016 that there were up to a million illegal migrants in the UK, noting that his calculation was based on the LSE figure. In 2017, David Wood, a former director-general of immigration enforcement, told the House of Commons Home Affairs Committee that the figure was now likely to be more than a million.³

5. Mr Wood (along with his co-author, former HO speechwriter Alasdair Palmer) has elsewhere said that *'the Home Office's internal estimate is that between 150,000 and 250,000 foreign nationals a year fail to return home when they should'*.⁴ Our analysis points to a gross addition of more than 105,000 overstayers, detected clandestine arrivals and failed asylum seekers who refuse to depart each year.

6. From the available figures, an average of 35,000 of this estimated illegal inflow is departing the country each year, meaning a net addition to the illegal population of *70,000 per year* (it should be noted that this does not include an estimate for the unknown number of undetected clandestine entrants).⁵ Illegal population estimates do not appear in official statistics.

Previous amnesties in the UK

7. Although UK authorities do not use the term 'amnesty', the first examples of amnesty by the UK government date back to the early 1970s. Since the 1990s they have been much more regular and involved significant numbers of people. Between 1993-2011 the government undertook four large-scale amnesties by stealth (euphemistically referred to as 'clearance exercises') which saw the granting of Indefinite Leave to Remain (ILR) to over a quarter of a million failed asylum seekers (see our [paper](#)). The most recent of these, which involved clearance of a 'legacy caseload' (2006-2011), involved 160,000 people and was described by the Home Affairs Select Committee as, *'in practice an amnesty... at considerable cost to the taxpayer'*.⁶

Routes to regularisation for illegals

8. The UK also operates routes that allow for the ongoing regularisation of those who do not have a right to be in the UK (see Annex A). This means that significant numbers of illegal immigrants are being granted the right to extend their stay or settle in the UK on an annual basis regardless of the regular large-scale official clearance exercises that have been undertaken by the government.

Why amnesties are wrong

9. As it has been estimated that there are more than a million illegal immigrants currently in the UK, an amnesty would likely result in an enormous number of people becoming entitled to the full benefits of the welfare state almost overnight. The Home Office's estimate, published in 2005, was that the total unauthorised migrant population living in the UK in 2001 was 430,000.

10. Migration Watch UK subsequently updated its estimate for failed asylum seekers who had not been removed and added an allowance for the subsequent children of illegal residents. This gave a central estimate for 2001 of 670,000.

An amnesty just for illegal immigrants who have been in the UK for more than 15 years could therefore well involve over half a million people.

Amnesties are wrong in principle

11. Overstaying a visa, entering the country illegally or failing to depart upon no longer having a legal right to be in the UK are all criminal offences and punishable by fines and/or imprisonment, according to the Immigration Act 1971.⁷ Intelligence-led arrests of suspected illegal immigrants or their facilitators

totalled only 2,631 in the whole of 2018.⁸ It is an affront to the rule of law, and to migrants to follow the correct channels, that a government should reward attempts to circumvent legal requirements.

Amnesties do not work

12. Amnesties encourage further illegal immigration as those granted amnesty are simply replaced by subsequent waves of illegal immigrants into the black economy who also hope ultimately to remain undetected for long enough to be regularised. Italy granted five amnesties in the past 20 years and saw the number of applications for regularisation more than double, from 119,000 to 308,000 between 1987 and 1998. Spain has granted multiple amnesties. Similarly, the number of applications of regularisation there more than doubled between 1991 and 2001, from 135,000 to 314,000.⁹ In nearly every case the number of applicants was higher than on the previous occasion. Italy's interior minister stated in 2018 that any type of amnesty for illegal immigrants was now '*unthinkable*'.¹⁰

13. Having granted two mass amnesties in 1981 and 1997, each involving about 150,000 people, the French authorities also concluded that they had simply encouraged further waves of illegal immigration, leading the Interior Minister to announce in May 2005 that further amnesties were '*completely out of the question*'. Despite this the French government continued to offer work permits to illegal migrants '*on a case-by-case basis*' – something that has failed to tackle the ongoing problem of illegal immigration in France and may have exacerbated it.

Amnesties are costly in terms of extra benefits and public services

14. An amnesty would also likely be costly for taxpayers. A person granted ILR is granted full access to the welfare state – ie, to social security benefits, education, healthcare and social housing.

15. The cost of this to the taxpayer would be very substantial. In 2013, the Home Office estimated that each additional person in the UK costs the taxpayer between £4,250 and £7,820 per year through the use of public services such as health and education, and welfare benefits.¹² While this would be offset to some extent by the contributions which the person concerned might make to the economy, at current tax rates individuals would have to be earning between approximately £24,350-£35,400 just to cover their own cost to the taxpayer (at current tax rates), let alone the cost of their dependants.

16. However, as the government has noted: "*It is thought that those seeking to remain in the UK illegally are likely to be found in the low skilled jobs in the lower half of the earnings distribution*".¹³ Academics Alessandra Casarico, Giovanni Facchini and Tommaso Frattini [noted](#) in 2018: "*Existing undocumented immigrants will tend to be on average less skilled than both existing legal migrants and the remainder of the native population. As a consequence of the legalisation, they will end up on the receiving end of the welfare state, and through this channel, will represent a burden for the host country.*"¹⁴ In the words of the chairman of the government's own Migration Advisory Committee, lower-skilled migrants make the UK '*a slightly lower-wage, lower productivity economy [and] any effects that they have on innovation are not positive.*'¹⁵ The average non-EEA migrant to the UK, even when those here on work visas have been factored in, has been calculated as making a negative fiscal contribution of £840/year.¹⁶

17. Other academics (Joan Monras, Javier Vázquez-Grenno and Ferran Elias) have stated that Spain’s amnesty in the mid-2000s ‘disproportionately affected the labour market outcomes of workers in high-immigrant locations’ and ‘worsened employment opportunities for both low-skilled natives and immigrants’.¹⁷

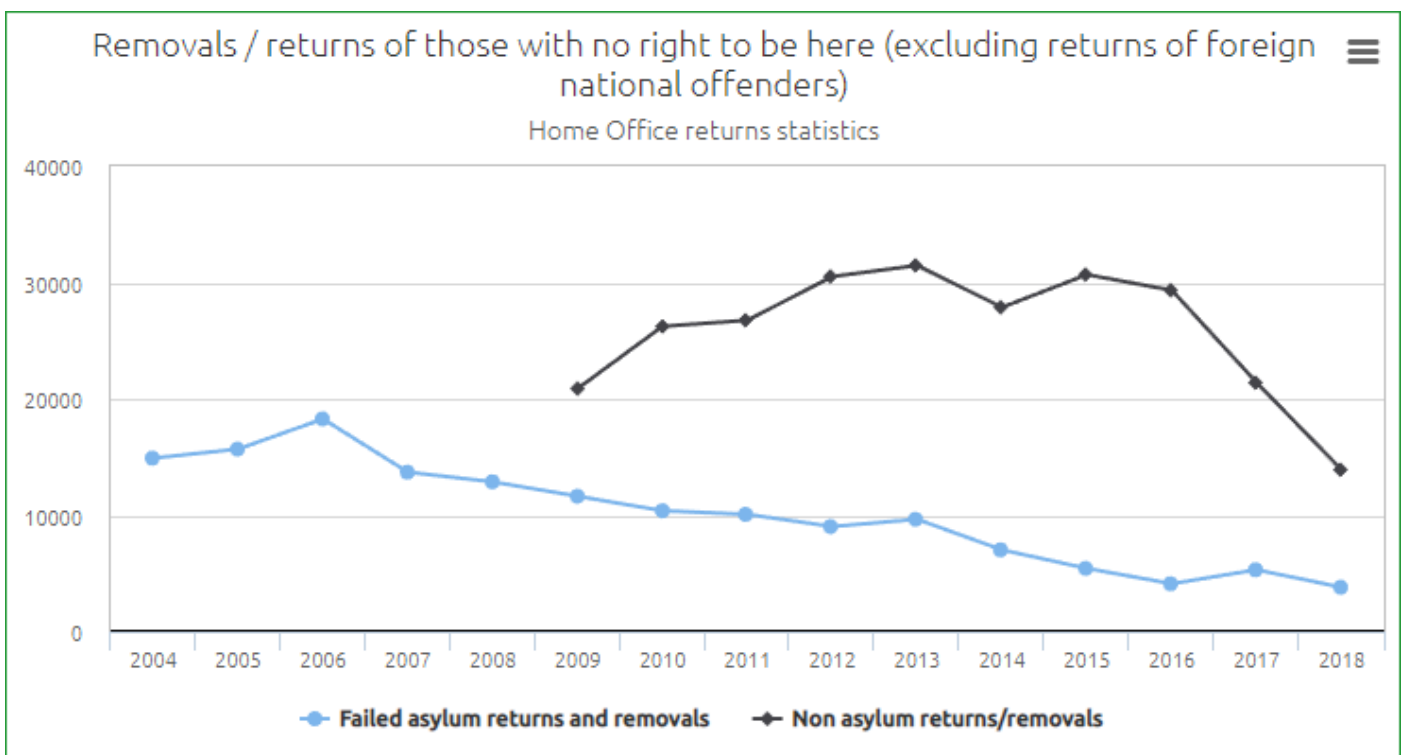
Potential subsequent family immigration

18. Once individuals have been granted ILR, they can bring in further dependants (including spouses or fiancés, children and parents). Receipt of ILR also permits an individual the right to apply for citizenship after five years of residence in the UK. Unpublished research by Migration Watch UK has found that over the period 2000-17, one additional person was likely to be granted leave to come to the UK via the family reunion route for every two asylum seekers granted ILR. Other research, by the German government¹⁸ and the OECD¹⁹ among others - and based upon family members who would subsequently join successful asylum seekers - indicates that the scale of subsequent family arrivals to be even larger.

Decreasing effectiveness of removal efforts and insufficient funding

19. As the Commons Home Affairs Select Committee has said: **“Amnesties set up a vicious circle which should be broken by discouragement of unfounded claims, fast and efficient processing of those claims when made, and rapid removals when claims have failed.”** Unfortunately, backlogs of failed asylum seekers, visa overstayers and illegal entrants have built up. The government’s record in this regard is becoming progressively worse (see Figure 1).

Figure 1: Removals / returns of those with no right to be here (excluding returns of foreign national offenders), Home Office returns statistics.



20. Meanwhile, a number of bureaucratic failures on the part of the Home Office with regard to immigration (documented by both the National Audit Office and the Chief Inspector of Borders and Immigration) do not provide a high degree of confidence that an amnesty would be competently managed. There is the potential for the amnesty process to become the target of abuse.

21. Resources are currently inadequate to address the task of providing the necessary security at UK ports. Staff recently described security at southern ports as *'resourced to fail'*²⁰, while the head of the Immigration Services Union has said that illegal immigrants *'have very little chance of being caught'* due to a dearth of investment in enforcement.

An alternative to amnesty

22. Amnesties are wrong in principle and have not worked on previous occasions. Such a scheme is not only entirely impractical. It would also go down very badly with the public. However, it is unfeasible to expect the UK authorities to quickly round up all those here illegally and ensure their rapid deportation. An alternative approach is therefore necessary.

23. Now that the new Prime Minister has taken office, the amount of resources being directed towards immigration enforcement and the Border Force should be significantly increased. It is essential initially to ensure effective and robust enforcement of the UK's borders so that the illegal population is prevented from growing even larger. An amnesty would make the problem even worse, but even in the absence of such a folly additional resources would also make it easier to locate and remove illegal migrants who are already here.

24. The new Home Secretary should re-establish the compliant environment measures which have largely been suspended since the Windrush scandal in spring 2018. There is strong public support for such measures (between 74-82%, according to 2018 YouGov polling).²¹ The Government should draw a line under Windrush and take the serious steps necessary to address illegal immigration rather than capitulate to the mass immigration lobby, which has weaponised this unfortunate series of events in a cynical bid to undermine the concept of border control.

25. The Government should also take all measures necessary to close down the routes to regularisation outlined in Annex A. Closing down the *Metock* route and withdrawing the UK from the ECHR as soon as Brexit has been delivered would be an excellent start.

Conclusion

26. There is already a substantial population of illegal immigrants in the UK. Removals have fallen sharply, especially in the last five years. Any amnesty would only make a bad situation very much worse.

29 July 2019

ANNEX A

i) Routes which allow regularisation for those with no right to be here

Regularisation means that a person goes from being someone with no right to remain to being a legal migrant with either temporary or indefinite leave to remain. There are a number of routes by which those without leave to remain in the UK are able either to regularise their status or which serve as a basis for non-removal.

Most of the regularisation routes that are available can be applied to illegal, quasi-legal and even legal migrants. Home Office statistics classify any migrant in the UK who is not on a work, study or family visa under the 'other' category, but the figures for those extending or being granted settlement from that category are not broken down in terms of their legal status at the point of application. It is therefore impossible to identify the proportion of those whose status is regularised who were in the UK illegally. The following figures therefore likely encompass an indeterminate number of applicants who are not illegals, although it is safe to assume that a significant proportion, if not all, would be.

Extensions

The number of extensions of stay under regularisation routes has increased significantly in recent years. In 2018, more than 53,000 people in the UK who were not on a family, work or study visa were granted an extension (compared to 13,400 in 2012).

Of these, 25,524 received family visas in the category of family life (ten year route). This route resulted from an amendment of the immigration rules (2012) to, '*embody the qualified right afforded by the European Convention on Human Rights Article 8 to respect for their private and family life*' and provide '*scope for an applicant without extant leave to qualify for a 10 year rather than five year route to settlement on the basis of their family life*'. The number of individuals granted an extension via the family life (ten year route) increased significantly in 2018 which may be linked to an August 2017 Supreme Court ruling that expanded its use. As one non-profit organisation notes: "*Typically, people granted leave under these categories [those relating to Article 8] do not have to meet any financial requirements and were usually overstayers at the time of making their first application.*"

Of the remainder, 15,977 were not transferred onto another visa but retained their 'other' status. Of these:

a) 4,405 were granted an extension on the basis of the 'Private life' route. As with the family life (ten year route), this was established in 2012 in order to incorporate Article 8 within the immigration rules. To qualify for this route it is necessary for an applicant to meet one of the following criteria:

- Have resided continuously in the UK for at least 20 years or be able to demonstrate that there are very significant obstacles to their integration in the country to which they would return
- Young people aged between 18 and 24 the applicant must have resided continuously in the UK for at least half of their life OR

- Children aged under 18 the must have resided continuously in the UK for at least 7 years and show that it would not be reasonable to expect them to leave the UK.

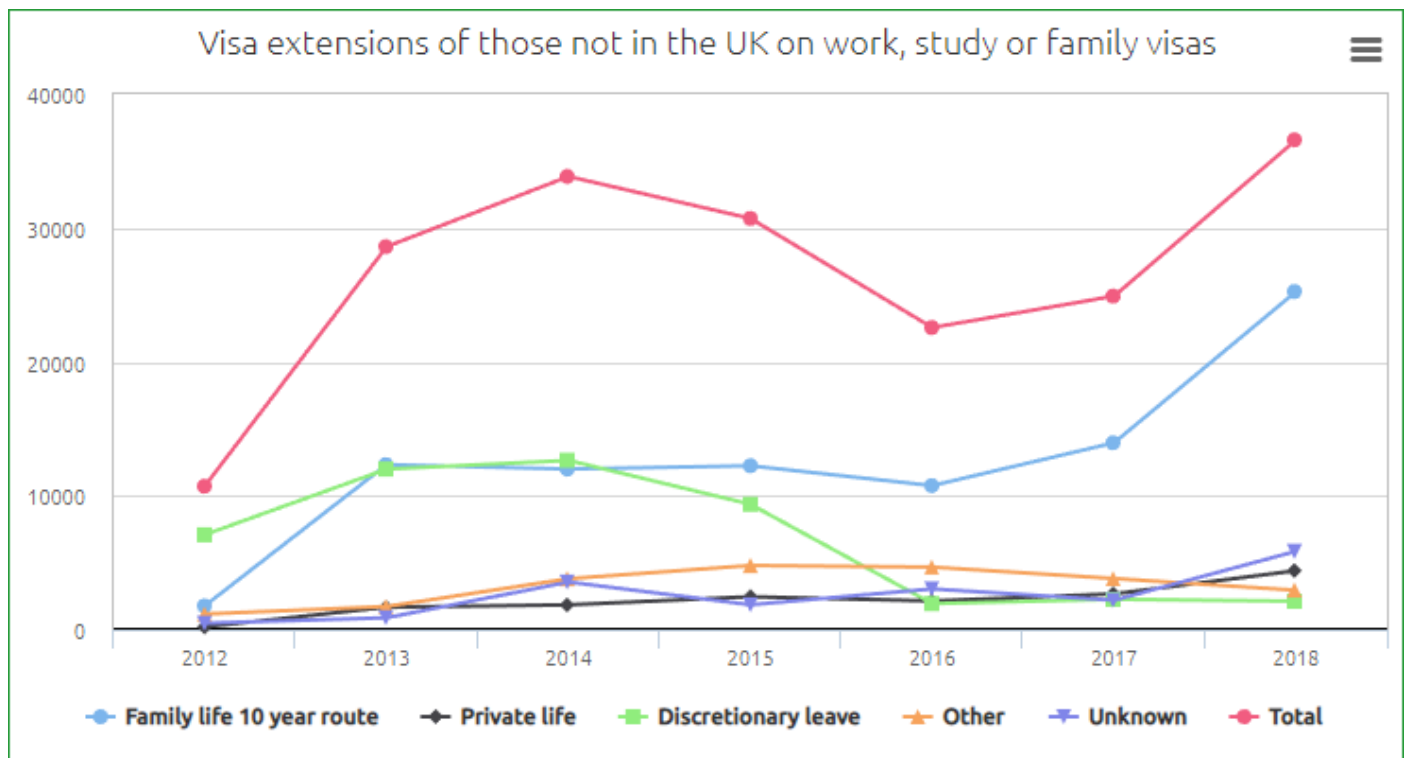
b) 2,125 were granted leave to remain on a discretionary basis which is defined as being, 'able to demonstrate particularly compelling reasons why removal would not be appropriate.'

c) 2,943 were granted an extension for 'other' reasons. The exact nature of 'unknown' grants is not clarified in the official Home Office immigration statistics user guide.

d) 5,855 main applicants were also granted extensions on a basis classified as 'unknown' by the Home Office.

Figure 2 (below) shows the number of main applicants being regularised via the aforementioned routes since 2012.

Figure 2: Visa extensions of those not in the UK on work, study or family visas



If 2012 is excluded due to the fact that the new regulations only came into effect in the second half of that year, it can be seen that an average of 29,539 main applicants were granted an extension into one of the above categories on average each year from 2013-1018.

The vast majority, if not all, of these would likely have been in the UK illegally.

Settlement

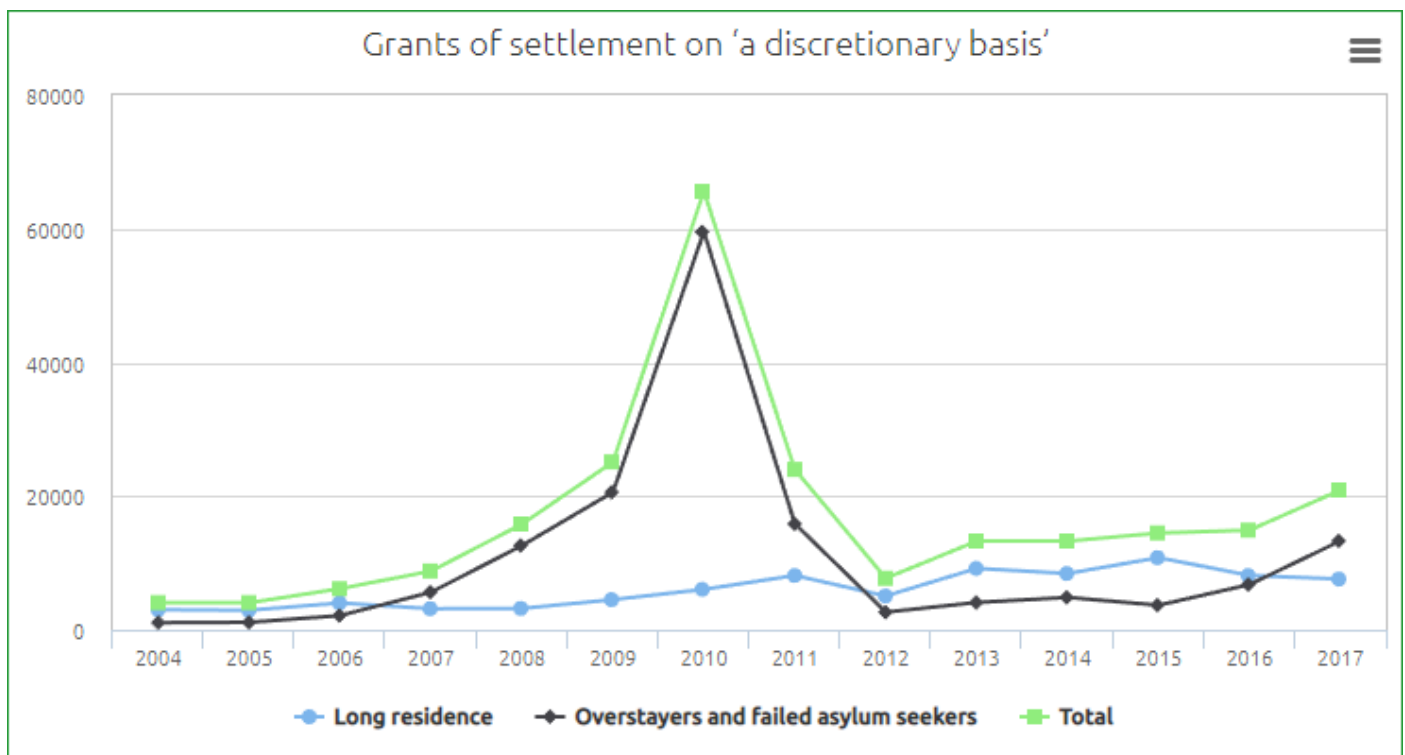
Illegal immigrants might also be granted settlement on 'a discretionary basis'. This is classified as meeting one of the following criteria:

- Applicants who have spent a long period of continuous residence in the UK
- Applicants who have applied under the regularisation scheme for overstayers
- Applicants granted ILR outside the Immigration Rules under measures aimed at clearing the backlog of outstanding unresolved cases from before March 2007 involving unsuccessful asylum applicants.

While most settlement grants made on the basis of long residence are likely to be to those in the UK illegally, it is possible that those with legal or quasi-legal status might also obtain settlement on that basis. However, the other two criteria apply exclusively to illegals.

Over the period 2004-2017, a total of 238,114 people were given settlement on 'a discretionary basis' (see Figure 3). Of these, 65% were overstayers or unsuccessful asylum applicants. While clearance of the 'legacy caseload' helps to explain the significant numbers granted settlement on this basis in the period 2008-2011, it is clear that large numbers of people are also regularly being granted settlement in the UK on the same basis outside the scope of official 'clearance exercises'.

Figure 3: Grants of settlement on 'a discretionary basis'.



Over the period 2004-17, an average of 17,008 applicants were granted settlement on 'a discretionary basis' every year.

ii) Metock

An additional route to regularisation is known as *Metock*. ***This allows non-EU nationals in the UK illegally to remain if they form a genuine relationship with an EU citizen.*** Prior to a 25 July 2008 ECJ ruling, those in the EU unlawfully - for example for example bogus asylum, seekers or overstayers - could not benefit from EEA law.

That approach was ruled unlawful by the *Metock* decision. The ruling means that the right to reside as a spouse of a Union Citizen under Article 2(2) of the Citizen's Directive is ***not dependent*** on prior lawful residence in another member state. In the UK context this meant that Regulation 12(1)(b)(ii) of the 2006 EEA Regulations (which required lawful residence) was deemed unlawful.

The judgment helps anyone who is from a non-EEA country but is married to (or the child or parent of) an EEA citizen who is in the UK and is employed, self-employed or self-sufficient.

The judgment in *Metock* applies specifically to situations where the EEA national is residing in an EU member state other than the Member State of which they are a national.

However, in certain circumstances, for example the case HB (Algeria), which was decided by the Asylum and Immigration Tribunal in September 2008, it can even help a non-EEA national with a relationship to a *UK citizen*. In that case the appellant was an illegal Algerian national who entered the UK illegally in 1996, married a UK national, moved with her for a time to Dublin, and then returned to the UK. The judge ruled that the appellant had an EU right of residence.

Referring to *Metock*, draft immigration proposals, drawn up by the government and leaked to the media in 2017, stated that: *"As the UK's exit brings an end to free movement, this will allow us to remove [this inconsistency] with regard to new arrivals to the UK post-Brexit"*. However, the December 2018 government White Paper outlining its post-Brexit immigration plans did not confirm what would happen to the *Metock* route following Brexit. *It would be helpful to have clarification from the new government of Boris Johnson on this particular point.*

According to a legal expert, the *Metock* route is popular. However, the extent of its use is difficult ascertain for certain. While statistics on applications made on the basis of the *Metock* judgement are included in Home Office's European Economic Area data tables, *Metock* applications are not separately identifiable.

Notes

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