



EU CITIZENS IN THE UK YOUR RIGHTS UP TO AND AFTER BREXIT

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In June 2016, the UK held a referendum which voted (by a small majority) in favour of the UK leaving the European Union. That is often called “Brexit” – short for “British exit”.

However, the UK did not leave the European Union immediately. The date that the UK plans to leave the EU – “Brexit Day” - is 29 March 2019. The UK is now negotiating with the EU exactly how it should leave, and what should be the future relationship between the EU and the UK.

A very important part of the negotiations is about what rights EU citizens who are in the UK will have after Brexit. This leaflet explains, in broad terms, what is happening in those negotiations, and what that might mean for those EU citizens in the UK.

What do these negotiations mean for EU citizens in the UK at the moment?

At the moment, the existing rights of EU citizens in the UK are not affected at all. That will not change until the date the UK actually leaves the EU, on “Brexit Day”. What happens after that date depends on what happens in those negotiations. Those negotiations between the UK and the EU are being carried out in three stages.

First, there is to be a “withdrawal agreement” which deals with the way in which the UK will leave the EU. The UK and the EU have come to a common understanding on, what rights that withdrawal agreement will give to EU citizens in the UK after “Brexit Day”. This leaflet explains in some detail what those rights will be, based on the information provided by the UK government. However, this agreement on citizens’ rights will only become definite once the UK and the EU have agreed the full and final “withdrawal agreement.”

Second, there is likely to be a “transition” or “implementation” period immediately after the Brexit Day. The UK and the EU have agreed that this transition period will last until the end of 2020. During that period, EU citizens who arrive in the UK by “Brexit Day” will have the rights which the “withdrawal agreement” will give them, assuming that it does come into force. The EU has also suggested that all EU citizens who already live in the UK, or who come to the UK during the “transition period”, will enjoy **all** the existing rights to move and reside freely which EU citizens are entitled to. The UK has now agreed to this (subject to the UK and the EU agreeing the whole “withdrawal agreement”).

Third, it is intended that there will be an agreement about what type of relationship there will be between the UK and the EU on a long term permanent basis after the “transition” or “implementation” period comes to an end. For EU citizens, who arrive in the UK by “Brexit Day”, that long-term agreement will include the rights which the “withdrawal agreement” will give them. However, it is unclear at this stage what rights EU citizens who arrive in the UK **after** “Brexit Day” will have.

What rights would the “withdrawal agreement” give to EU citizens in the UK?

The UK government website (<https://goo.gl/rc5XCn>) explains the main points of that agreement.

This is what the agreement will mean for EU citizens and their families in the UK after “Brexit Day”:

> People who, by 29 March 2019, have been continuously and lawfully living here for 5 years will be able to apply to stay indefinitely by getting ‘settled status’. That means they will be free to live here, have access to public funds and services and go on to apply for British citizenship.

> People who arrive by 29 March 2019, but won’t have been living in the UK lawfully for 5 years when we leave the EU, will be able to apply to stay until they have reached the 5-year threshold. They can then also apply for settled status.

> Family members who are living with, or join, EU citizens in the UK by 29 March 2019 will also be able to apply for settled status, usually after 5 years in the UK.

> Close family members (spouses, civil and unmarried partners, dependent children and grandchildren, and dependent parents and grandparents) will be able to join EU citizens after exit, where the relationship existed on 29 March 2019.

EU citizens with settled status or temporary permission to stay will have the same access as they currently do to healthcare, pensions and other benefits in the UK.

You’ll be able to apply for settled status if you’re a citizen, or the family member of a citizen, of an EU country. We’ve agreed with the EU that the conditions for EU citizens and their family members to get settled status in the UK will be the same as, or more generous than, those set out in the existing Free Movement Directive. In most cases this means you will need 5 years of continuous and lawful residence in the UK. The criteria will be set out in the withdrawal agreement between the UK and the EU.

If you meet the criteria and submit a valid application you will be granted status, unless:

> you weren’t resident in the UK by 29 March 2019 (Unless you’re a close family member of an EU citizen living in the UK but were living outside the UK when the UK left the EU)

> you’re refused on the grounds of your serious criminal convictions or for security reasons

The withdrawal agreement will become a part of UK law and so the Home Office will not be able to refuse an application for any reason not covered by the agreement.

QUESTIONS AND ANSWERS

There’s no doubt that the agreement reached between the UK and the EU about citizens’ rights after Brexit would give most EU citizens rights which are very similar to the rights they currently have in the UK under EU law. But they won’t be exactly the same, and lots of the details remain uncertain. So we’ve tried to answer some of those questions:

1. Are these rights for EU citizens in the UK after Brexit now guaranteed?

No. They will be guaranteed only when the Withdrawal Agreement is agreed and ratified.

2. What happens if there isn’t an overall “Brexit deal” and the agreement on citizens’ rights doesn’t go ahead?

No one really knows. At one extreme, if there was no deal at all, this could mean that EU citizens would have no special rights to remain in the UK at all after Brexit happens. They would only be able to stay in the UK on the same basis as a citizen from any other foreign country outside the UK. At the other extreme, the UK might decide by itself to give EU citizens the rights to stay in the UK that they would have got under the citizens’ rights agreement.

3. If there is an overall “Brexit deal”, will the agreement on citizens’ rights definitely come into effect on 29 March 2019?

Not necessarily. It is legally possible for the UK and the EU to agree that the UK would leave the EU at an earlier date than 29 March 2019, although this is very unlikely. They could also agree that the UK could continue to stay in the EU after 29 March 2019, for example if negotiations hadn’t been completed in time. If either of these things happened, then it is likely that the date of the agreement on citizens’ rights would be changed as well to that different date. And there are some politicians and campaigners in the UK who want to cancel Brexit completely, in which case EU citizens rights in the UK would continue to exist just as they do now.

4. The agreement talks about EU citizens “lawfully” in the UK. What does that mean?

The “common understanding” between the UK and the EU protects rights based on EU law which allow EU citizens to move and reside freely. Lawful residence depends on whether EU citizens and their family members were residing in the UK under the conditions that apply to the right of residence under EU law.

5. What is the position about EU citizens in the UK who are married to, or are partners, of a UK citizen?

The “common understanding” between the UK and the EU guarantees that all EU citizens who meet the conditions of residence under EU law are protected, whether they are married to a UK citizen or not. The “common understanding” does not prevent the UK from including also those persons who have resided in the UK lawfully but not in accordance with EU conditions. This could include spouses/partners of UK citizens who have rights under the UK’s own rules on the rights of family members of UK citizens.

If the UK decides not to include such EU citizens in the Withdrawal Agreement, they will still be able to reside in the UK if they qualify under the UK’s own rules on rights of family members of British nationals.

6. What about EU citizens or their families who are currently living in the UK because they have “indefinite leave to remain”?

Most EU citizens and their families who are currently living in the UK can do that because they have a right to do so under EU free movement law. Those who were in the past given “indefinite leave to remain” status by the UK, and still hold a valid “indefinite leave to remain” document can stay without having to apply for the settled status. For these people, the UK government website says this:

“Indefinite leave to remain status will not be affected by the UK leaving the EU.

Once the application scheme for settled status opens there will be a simple process for you to exchange your old indefinite leave to remain document for a settled status document free of charge, should you wish to prove you benefit from the withdrawal agreement. We won’t repeat any assessment of residence.”

If they wish, holders of a valid “indefinite leave to remain” document can apply for settled status which would be issued free of charge.

7. What about my human rights?

Although the UK is now preparing to leave the EU, the UK will still remain a member of the European Convention on Human Rights, and the UK Human Rights Act of 1998 will remain law. EU citizens in the UK after Brexit will therefore continue to have the rights which that law gives them.

8. How will EU citizens in the UK be able to get “settled status”?

The UK government has also explained on its website how it expects people to be able to apply for “settled status”. It says:

EU citizens and their family members in the UK will need to apply to get their status document. Getting this status will prove (for example, to employers or public service providers) that they have permission to continue living and working here in future.

The application fee will be no more than the cost charged to British citizens for a UK passport.

If you already have a valid permanent residence document, it will be free.

We’re making the application process as streamlined, quick and user-friendly as possible. We’ll use existing government data to reduce the amount of evidence you will need to provide. For example, HMRC’s employment records will show us your UK work history.

As an EU citizen applying to the scheme, you will need to:

- > provide an identity document and a recent photograph to confirm your identity and nationality
- > declare any criminal convictions

You won’t have to:

- > account for every trip you’ve taken out of the UK
- > show evidence that you held comprehensive sickness insurance (In some circumstances, comprehensive sickness insurance is still required for the purposes of accessing the healthcare system in the UK, but will no longer be considered as a requirement for acquiring settled status.)
- > give your fingerprints

The government has said it expects people to be able to apply online from late 2018. It has also promised that the Home Office will provide support to make sure applications aren’t turned down because of simple errors or omissions. It also says on its website:

So people have enough time to apply, the scheme will remain open for applications for a considerable period, at least 2 years, after the UK leaves the EU. During this period your rights in the UK will be protected. If you apply under the scheme, but don’t receive a decision before the end of this period, you can continue living here until the decision is made.

(Irish citizens in the UK will not be required to apply for settled status. They will keep their current rights to reside, to work, study, access social security and public services in the UK.)

The negotiations between the UK and EU about Brexit are not finished. In addition, the law on citizenship and immigration is often very complicated. This leaflet only explains the broad outlines of the negotiations. It does not show UK and EU law on citizens' rights in full detail.

You can find more details about the "common understanding" between the UK and the EU, and what it means for citizens' rights in this document produced by the European Commission: (<https://goo.gl/W9V7fg>).

If you want more information or advice about how Brexit will affect your own individual status in the UK, you can get advice from a regulated immigration adviser or lawyer. You can find a list of regulated immigration advisers here: (<https://goo.gl/htFrhC>).

You can find a list of solicitors, including law centres, here: (<https://goo.gl/mjxQi9>). Some advisers or solicitors will be able to provide free advice, but many will charge. You can always ask whether you will be charged for advice before you ask them to give it to you.

You can also find information about the basic UK rules on immigration on the Citizens' Advice website, here: (<https://goo.gl/s4Kfze>). This website also gives a lot of useful general advice, including on consumer rights, workers' rights, rights to housing, health and benefits.

This leaflet has been produced by the EU Citizens' Rights project Scotland, a Public Policy events initiative.

The project is also supported by Migrants Scotland, New Europeans Scotland, Edinburgh and Lothians Regional Equality Council, Polish Cultural Festival Association, and the Centre for Scottish Public Policy.

Media partner: emito.net

The project has received financial support from the European Commission Office in Scotland.



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