



Citizens' rights in a no deal scenario

The next 6 months will be crucial in the UK's exit from the EU. There remains huge uncertainty about what the future holds for EU citizens in the UK. Will there be a deal, will there not be a deal? **the3million** have analysed the possible consequences for citizens of a no deal scenario.

'No deal' will be a nightmare for over 5 million citizens caught up in Brexit on both sides of the channel. It leaves these citizens in a very precarious legal position and lacks any arrangements that need UK-EU co-operation, like pension and social security aggregation, and access to healthcare. Without any legal guarantees and oversight arrangements between the EU and the UK, the rights of EU citizens in the UK are extremely vulnerable to future changes.

It is inconceivable for millions of people to have to wait, not knowing for sure whether their legal status will be backed by a Withdrawal Agreement or not.

Ring-fencing what has already been agreed on protecting citizens' rights (despite its serious shortcomings) from the rest of the Draft Withdrawal Agreement is by far the best solution, and it is legally possible¹. Further postponing a decision on citizens' rights risks resulting in no agreement at all on this issue or in a further reduction of the rights currently guaranteed by the Draft Withdrawal Agreement. This is unacceptable to us. Enough is enough. All we need is the political will to make this happen before it's too late.

We urge the EU and the UK to commit at the October EU Council meeting to the signature and expedited ratification of a citizens' rights agreement under Article 50 so that it may come into force on 29th March 2019 in case no overall agreement on the UK's withdrawal can be reached.

What will happen to EU citizens in the UK in case of no deal?

1. Loss of rights agreed under WA

It is important to emphasise that EU Citizens will not immediately fall into a legal limbo, because the UK Government passed the European Union (Withdrawal) Act 2018 (EUWA). The EUWA ensures that EU laws in place until exit day will continue to apply after exit, including the rights enjoyed by EU citizens.

In addition, the UK Government, as part of what has been agreed under the Draft Withdrawal Agreement, has put in place amendments to Immigration Rules in order to implement a registration scheme to grant 'settled status' to EU citizens resident in the UK for five years. Rules also exist that will allow EU citizens who do not have five years residence in the UK to live in the UK and to qualify for settled status in the future. This registration scheme is currently being trialed and it is anticipated a roll out of the registrations process will start soon.

The UK Government has stated that this scheme will apply in case of no deal. But the UK Government has not yet clarified whether our status and rights under the scheme and the criteria for qualifying will remain unchanged or be further reduced in case of no deal. It is also unclear whether those who have not acquired five years of residence will still be able to register for pre-settled status. Noticeably, a UK Government's

¹ <https://eutopialaw.com/2017/06/16/brexit-a-separate-citizens-rights-agreement-under-article-50-teu/>



technical notices on citizens' rights was not included as part of the set of 77 official notes issued on the 'no deal' subject.

CASE STUDY - Family reunification rights will be seriously compromised

Wendy is a Dutch citizen and has lived in the UK for 25 years. Her mother is elderly and getting increasingly frail. She is an only child and will eventually have to look after her mother in the near future. She is concerned that if there is no deal and family reunification for dependents is not agreed or curtailed in the future, she won't be able to bring her mother to live with her and would have to move back to the Netherlands to be able to care for her. This, however, could also jeopardise her own residency rights in the UK.

2. Consequences of loss of reciprocal agreements

At 11:01pm on 29th March 2019, EU citizens **will** instantly face a legal limbo regarding some aspects of their status in the event of no deal. Most immediately, the EUWA and amendments to the Immigration Rules cannot cover those rights that EU citizens have thanks to coordination agreements between the UK and the EU. This, for example, includes huge uncertainty over the recognition of pension entitlements they have built up in the UK and would carry with them if returning to their country of origin or vice versa; recognition of professional qualifications; or access to healthcare that depends on coordination and payments between the NHS and health services in the EU.

CASE STUDY - Existing agreements on social security and pensions will no longer apply:

Belen is a Spanish citizen who has been living in the UK for 20 years. She worked for some years in her home country and also in France. She had originally planned to retire in Spain, but as her daughter recently had a baby, she might stay in the UK to help with child-care for some more years. She is not sure if there would be an agreement regarding the aggregation of pensions. If not, she might lose the recognition of contributions accumulated in different EU countries if she chooses to stay in the UK but also if she moves back to the EU.

3. Future changes to immigration status and rights

The continuing application of EU law under the UK's EUWA is unlikely to last long. Managing immigration and ending free movement is a top priority for the UK Government, as highlighted in statements by Mrs. May and the UK Home Secretary, Sajid Javid, at the recent Conservative conference. It is therefore plausible that the UK Government will quickly move to adopt new rules on immigration, which will deviate from current EU law. These could extend to EU citizens currently living in the UK.

Without an agreement in place, the UK Government could change the status of EU citizens already in the country to bring it in line with their general immigration rules, with few restrictions on the government and fewer legal routes for EU citizens to object. Even just changing the status of future EU immigration will have immediate (unintended) consequences for EU citizens already in the UK; without the proper oversight and international protection, there would likely be increased (erroneous) discrimination by landlords, employers



and service providers who fail to distinguish new arrivals from those already resident if the latter are not guaranteed a proof of their special status.

Changes to the status of EU citizens already in the UK can happen even without any real parliamentary debate. The EUWA gives the UK Government new powers to “*modify, limit or remove the rights which domestic law presently grants to EU nationals, in circumstances where there has been no agreement and EU member states are providing no such rights to UK nationals.*”² In addition, the Immigration Rules are implemented through secondary legislation, which means that they can be easily changed with little parliamentary scrutiny. Just such a change in 2014 removed a clause³ protecting “Windrush citizens” that had life-changing consequences for many rightful residents.

CASE STUDIES –EU citizens living in the UK will be left vulnerable to changes in UK immigration policy

Julia and Maciej, a couple of Polish citizens, moved to Liverpool in 2016 shortly before the referendum. They had intended to apply for pre-settled status after March 2019 until they had 5 years of residency in the country and they could apply for settled status. But the negotiations between the UK and the EU have failed and the UK has exited the EU without a Withdrawal Agreement. It is now October 2019 and EU nationals in the UK have been assured by the Prime Minister that they can stay. Sadly, as a result of the introduction of the Government’s new immigration policy, a £30,000 minimum salary threshold for all foreign workers to obtain visas and leave to remain is now applied. Julia and Maciej, who both have low paid jobs, therefore no longer qualify and they have no other choice but to leave the country

Frans is a German citizen who has lived in the UK for 25 years. By the end of 2019 Frans applies to be granted settled status. As the UK has left the EU without a Withdrawal Agreement, however, it has decided to be more restrictive regarding the application of a criminality test for settled status applicants. Specifically, the Government has decided to further lower the threshold allowing deportation on the grounds of criminality. Due to the economic consequences of a no deal Brexit, Frans has lost his job and as a result he has not managed to keep up with his mortgage payments. Desperate about his situation, one night he has a beer too many and is arrested for drink driving. Under the new rules, the Government considers drink driving a serious criminal offence justifying deportation, and Frans fails his settled status application. Suddenly he has not only lost his job and his home but also the right to live in the country where he has spent most of his life and where his son is growing up.

Finally, in the case of settled status rejections, citizens will not be able to lodge a complaint with the EU Commission or the CJEU for a violation of their rights. This will be compounded by the fact that they will have no access to legal aid, and may struggle to access their data due to the immigration exemption to the Data Protection Act 2018⁴. Moreover, while the Withdrawal Agreement makes the principle of non-discrimination directly enforceable in British courts, such international protection will not exist in the case of no deal.

² House of Lords Explanatory Notes on Delegated Powers within EUWA: <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0079/18079en07.htm>

³ Previously, all longstanding Commonwealth residents were protected from enforced removal by a specific exemption in the 1999 Immigration and Asylum Act. This clause was removed in the revised 2014 legislation.

https://www.huffingtonpost.co.uk/entry/windrush-home-office_uk_5ad61093e4b0edca2cbe405c

⁴ <https://www.the3million.org.uk/gdpr>



SCENARIO COMPARISON TABLE

Right, as a non-UK EU citizen living in the UK	Current UK in EU	No deal	Withdrawal Agreement / Ringfenced citizens' rights
Vote for or stand as a British MEP in elections to European Parliament ⁵	✓	✗	✗
Vote or stand as a candidate in local council elections ⁶	✓	?	?
Be joined by existing family members (spouses, [registered] partners, descendants and ascendants) of any nationality after the end of transition	✓	?	✓
Be joined by future spouses after 1 January 2021	✓	✗	✗
Be joined by other family members (siblings, cousins, aunts, uncles and others) who are dependent on you or members of your household or require your care	✓ ⁷	✗	✗
Automatically acquire right of Permanent Residence after 5 years	✓	✗	✗
Move away from the UK and return (under terms of deal) after absence of up to 2 years	✓	?	✓
Move away from the UK and return (under terms of deal) after absence of up to 5 years ⁸	✓	✗	✓
Move away from the UK and return (under terms of deal) after absence of more than 5 years ⁹	✓	✗	✗
Entitlement to all social security benefits, equal to UK citizens	✓	?	✓
Social security aggregation: previous periods of insurance, work or residence in other EU countries are taken into account to calculate benefits in UK	✓	✗	✓
Pension aggregation: automatically receive state pensions from previous work in other EU countries	✓	✗	✓
Automatic mutual recognition of some professional qualifications (e.g. doctors, nurses, midwives, vets, dentists, pharmacists, architects)	✓	?	✓
Recognition of EU 'home title' professional qualifications (e.g. Italian 'avvocato' practicing in the UK without qualifying as solicitor or barrister)	✓	?	✗
Study in EU country of origin, on 'home fees' rather than international fees.	✓	?	?
Provide cross-border services to EU27 (physically or remotely e.g. via internet)	✓	✗	✗
Return to EU country of origin, with UK or non-EU family – depends on that EU country's national immigration law.	✓	?	?
Protection from deportation for offenders who do not pose a risk to public security	✓	✗	✗
Oversight and governance, including dispute mechanism and independent monitoring	✓	?	?

⁵ Some EU citizens have the right to vote for EU MEPs in their country of origin, but this right varies per country, e.g. Belgium does not allow it for citizens residing outside the EU.

⁶ Citizens of Ireland, Malta and Cyprus are, and remain, entitled to vote in both UK local elections and UK general elections.

⁷ They have the right to have their entry and residence facilitated, see Directive for more details. They have no 'automatic' right, and are subject to the host EU country's discretion

⁸ Once Permanent Residence or 'settled status' has been obtained

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