

What happens to EU citizens living in the UK in the case of no deal?

1) As a result of [the European Union \(Withdrawal\) Act 2018](#), there will be no immediate 'legal limbo' on 30 March 2019 and EU law will remain in force until UK law changes it.

Please note,

- rights are those provided by current EU law, not those set out in the Withdrawal Agreement (e.g. no right of return for five years for those holding permanent residence; but only two years)
- according to the Withdrawal Act, this EU law will still be interpreted according to EU case law prior to Brexit, but it will not bind the Supreme Court and, changes might appear as soon as new Government measures or legislation are adopted.

2) However, some of our rights are 'cross-border', such as some health arrangements, or building up and transfer of social security entitlements.

In legal terms, many of these are not explicitly based on a condition of reciprocity; so, as the Withdrawal Act unilaterally commits still to respect them, there is no immediate problem on day 1 for the most part. For instance, we will still have access to the NHS; professional qualifications will still be recognised, social security entitlements built up in the EU will also be recognised in the UK. However, EU Member States have not adopted such acts. So, if there is no Withdrawal Agreement and unless they do something soon, we fall into a legal limbo with regard to our social security entitlements if we move back to EU!

Equally, unlike most security entitlements which are based on identifying which state will pay, the EHIC scheme is based on de facto payments between countries. In theory, a unilateral promise such as the Withdrawal Act can still make it function in the UK. I assume that will fall apart on day one of Brexit, in spite of the Withdrawal Act.

3) Much of what I said in point 1 and 2 is a bit theoretical; because the Withdrawal Act only offers protection UNTIL the Government adopts new measures. The likelihood is that the Government will not wait to do so because:

- immigration is its number one priority
- if it wants to deal with future EU immigration, it equally has to deal with us, because requiring registration/visas for new arrivals without us being registered is not going to work
- you can imagine it is not going to play the good guy for long regarding unilateral recognition of qualifications or social security entitlements if EU27 Member States have not made similar commitments.

So, most of the Withdrawal Act protection might only last for a few days, weeks, maybe a few months in case of 'no deal', rather than anything long term. Even then, the Government may have adopted new legislation/measures prior to exit date.

4) So, what can we expect the Government to do? It will seek to give us ILR on a system close to the proposed Settled Status scheme. Regarding the substance of rights: expect ILR. We will not get the Withdrawal Agreement's 'extras' such as the five-year right to return. We have other rights which are not covered by ILR, but which most probably fall within the category of 'pseudo-reciprocal' issues discussed in point 3.

While ILR will probably soon be set on track with the application scheme, these issues will probably depend on whether there will be some bilateral agreements with the EU on this in the future. Or, should this not happen, the UK is likely to change our rights unilaterally, hence diminishing the benefits of the Withdrawal Act.

5) How long it will take before the UK takes measures and thus overrides the Withdrawal Act also depends on whether this has to be done by primary or secondary legislation. Unfortunately, the Withdrawal Act gives the Government considerable power to act via secondary legislation within the first two years after exit to deal with what it sees as the 'deficiencies' of retained EU law.

It is clear the Government believes it can impose the registration system for ILR via secondary legislation. I have argued before that this is problematic from a legal perspective IF there is a Withdrawal Agreement, due to its Section 9. If there is no Withdrawal Agreement, it falls under section 7 instead. Further investigation is needed to check whether the Government can get away with dealing with our full status via secondary legislation.

6) The Withdrawal Act avoids legal limbo in theory. However, the question is what a landlord or a local bank employee will think about that... In any case, everybody will expect our status to be in much flux until the Government sets the definitive rules. Such uncertainty is not legal limbo, but in practice the consequences might not always be or feel that different.

To sum up:

The European Union (Withdrawal) Act 2018 is useful because it avoids a legal limbo and remains a fall-back in as far as new government initiatives do not provide new measures. However, the Government is entirely free to do what it wants, and the likelihood is that it will quickly do so. If it does not act quickly, it remains to be seen to what extent private actors take the Withdrawal Act seriously and interpret it (e.g. they may know more about how the Government would fine them in the context of the hostile environment than about the rights the Withdrawal Act is supposed to guarantee for us).

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This is a short analysis of the effect of 'no deal' on EU citizens living in the UK. It does not constitute legal advice and people seeking clarification over their own status should seek legal advice.

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