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# EU and UK citizens' rights after Brexit

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An overview

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## IN-DEPTH ANALYSIS

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This paper analyses the implications of the withdrawal of the United Kingdom from the European Union for the rights of both EU and UK citizens. It also aims to give an overview of the rights that are protected by the Withdrawal Agreement and of the national measures adopted so far by the UK and the EU Member States to ensure the proper implementation of the citizens' rights covered by the agreement.

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## Executive summary

On 1 February 2020, the withdrawal of the United Kingdom (UK) from the European Union (EU) became effective. With the UK's exit from the EU, UK nationals lose the rights deriving from EU citizenship, unless they also have the nationality of an EU Member State. This means, first and foremost, that they lose freedom of movement rights across the EU, but also political rights such as the right to vote and to stand as a candidate in European and municipal elections, the right to petition the European Parliament and to lodge complaints before the European Ombudsman, among others. In addition, EU citizens resident in the UK find themselves in a third country which will no longer be bound by common EU rules regarding their treatment.

Nevertheless, the UK left the EU on the basis of a negotiated withdrawal agreement. Part Four of the withdrawal agreement institutes a transition period until 31 December 2020, during which time the UK is treated as a Member State and EU law continues to apply in and to the UK – with certain exceptions provided for in the agreement. Therefore, until 31 December 2020, UK nationals in the EU will continue to benefit from most EU citizenship rights, most importantly freedom of movement rights. Notable exceptions are the right to participate in a European Citizens' Initiative and the right to vote and stand as candidate in European Parliament elections and in municipal elections in the Member State of residence (although national measures may allow for the continuation of the exercise of franchise rights). EU citizens also benefit from the freedom to move to the UK during the transition period, based on the applicable EU law.

Beyond the transition period, Part Two of the withdrawal agreement preserves most of the rights of EU and UK citizens who have made use of their freedom of movement rights in accordance with EU law before the end of the transition period. In particular, the provisions of the withdrawal agreement regarding citizens' rights cover entry/exit and residence rights, workers' rights and social security coordination rules. This will allow EU and UK citizens who previously exercised their rights to live, work and study in the UK and the EU respectively, under EU law, to maintain these rights for their entire lifetime, as long as they continue to meet the conditions set in the agreement. The rights of reunification with certain (third-country) family members are also protected.

On the other hand, EU citizens arriving in the UK, and UK citizens arriving in the EU, after the end of the transition period will not benefit from the protection of the withdrawal agreement. Both UK and EU nationals will have to comply with the national immigration rules applying to third-country nationals, unless the EU and UK agree on specific mobility arrangements, either as part of the future relationship agreement currently being negotiated or in a subsequent agreement.

This paper analyses the consequences of the UK withdrawal from the EU for citizens' rights, both during and after the transition period. It provides an overview of the rights guaranteed by the withdrawal agreement and takes stock of the measures taken or envisaged by the UK and the EU Member States to implement the citizens' rights provisions of the agreement.

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## 1. EU citizenship rights

The 1992 Maastricht Treaty introduced the legal status of [EU citizenship](#), although the concept was proposed as early as the 1960s. The nationality of a Member State is the sole condition and legal prerequisite for holding EU citizenship: every person holding the nationality of a Member State is automatically a Union citizen, irrespective of their place of residence (see Court of Justice of the European Union (CJEU) cases [Micheletti](#) (1992), [Eman and Sevinger](#) (2006)). The Treaties provide that Union citizenship shall be 'additional to and not replace' national citizenship (Articles 9 Treaty on European Union (TEU) and 20(1) Treaty on the Functioning of the European Union (TFEU)). EU law does not set autonomous rules on the acquisition and loss of EU citizenship, which must follow the [rules for the acquisition and loss of the nationality of the Member States](#), as laid down in their respective national citizenship laws, within the limits of European and international law.<sup>1</sup> Therefore, third-country nationals or stateless persons cannot acquire citizenship of the Union in isolation from the nationality of a Member State, and it is not possible to renounce EU citizenship independently. This interlinkage means that it is for the Member States to determine who is an EU citizen through their domestic rules on nationality. [EU citizenship](#) (Article 20 TFEU) is embodied in a series of rights:

- The [right](#) to move and reside freely within the Union (Article 21 TFEU): [Directive 2004/38/EC](#) covers most aspects of the free movement of persons in the EU, including entry and residence rights, provisions regarding non-discrimination and protection against expulsion, as well as the rights of (non-EU) family members of EU citizens. It applies only to migrant EU citizens, i.e. those who move to or reside in a Member State other than that of their nationality. Incorporated into the European Economic Area (EEA) Agreement, the Directive also applies to citizens of non-EU EEA countries.<sup>2</sup>
- The right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in the Member State of residence, under the same conditions as nationals of that state (Article 22 TFEU, Articles 39 and 40 of the [EU Charter of Fundamental Rights](#)). The detailed arrangements for the exercise of this right are laid down in Council Directives [94/80/EC](#) and [93/109/EC](#).
- The [right](#) to consular protection by any other Member State in a third country where the right-holder's home state is not represented (Articles 20 and 23 TFEU, Article 46 of the EU Charter). This entails assistance in cases of emergency situations, arrest or detention, serious accident or illness, and similar. [Council Directive 2015/637](#) lays down the means for cooperation among Member States for the protection of this right.
- The [right](#) to petition the European Parliament on matters falling within the Union's fields of activity and which affect the petitioners directly (Articles 24 and 227 TFEU), to appeal to the [European Ombudsman](#) in cases of maladministration in the activities of EU institutions, bodies, offices or agencies, with the exception of the CJEU (Articles 24 and 228 TFEU); and to write to the EU institutions, bodies or agencies in any of the EU official languages and to obtain a reply in the same language (Article 24 TFEU). The right to petition the Parliament and the European Ombudsman is also enshrined in the EU Charter (Articles 44 and 43) and extends to any 'natural or legal person residing or having its registered office in a Member State'.
- The [right](#) to launch a citizens' initiative introduced by the Lisbon Treaty (Article 11(4) TEU): at least one million EU citizens from a significant number of Member States have the right to invite the European Commission, within the framework of its powers, to

<sup>1</sup> In [Rottman](#), the CJEU established that, in determining the loss of citizenship, Member States need to take into account EU law, and in particular general principles of EU law (such as the principle of proportionality).

<sup>2</sup> For an extensive overview, please see L. Tilindyte, [EU citizenship rights](#), EPRS, March 2017.

submit a proposal on matters where they consider a legal act is required for implementing the Treaties.

The final paragraph of Article 25 TFEU states that provisions may be adopted to strengthen or to add to these rights. In addition, the concept of EU citizenship encompasses the principle of freedom from discrimination on grounds of nationality within the scope of application of the Treaties (Article 18 TFEU). Combined with the right to move and reside freely, the prohibition of discrimination essentially entitles EU citizens moving to another Member State to 'home treatment' in the state of residence. However, these rights are not absolute but subject to conditions and limitations set out in the Treaties and secondary legislation.<sup>3</sup> Moreover, some of these rights are not exclusively reserved for EU citizens but may apply to qualifying third-country nationals (e.g. the right to petition the European Parliament or complain to the European Ombudsman, as mentioned above). Likewise, third-country nationals who are long-term residents (at least five years) enjoy equal treatment with regard to a broad range of entitlements ([Council Directive 2003/109/EC](#)).<sup>4</sup> Overall, however, the legal regime for non-EU citizens is less favourable compared to the provisions applicable to EU citizens.

Following the withdrawal of the UK from the Union (Brexit), UK nationals lost their status as EU citizens; some [experts](#) therefore argue that 'indirectly, Article 50 adds a ground for loss of Union citizenship.' In this context, the EU was urged to grant all UK nationals a form of [EU associate citizenship](#) that would allow free movement and residence rights across the EU. However, [other experts](#) underline that the EU's ability to deal with the loss of rights by citizens of a withdrawing Member State is limited, as there is no autonomous, supranational citizenship to be granted or withdrawn directly by the EU: only the Member States could change the Treaties 'to allow for an exceptional provision of full EU citizenship, or merely some rights associated therewith, for the nationals of the withdrawing state'. They further argue that 'an alternative, and more general reform, implying turning EU citizenship into a truly independent status at the level of acquisition and loss is probably not politically viable at the moment, just as it was not since the Treaty of Maastricht'.

## 2. Impact of Brexit on EU and UK citizens' rights

It is [estimated](#) that more than 3.7 million EU citizens live in the UK.<sup>5</sup> Excluding Irish nationals (around 322 000 people), whose residence rights are protected under the [Common Travel Area](#) established with the UK, there are around 3.4 million [EU citizens](#) in the UK. Eurostat data show that there were about 857 000 UK citizens in the EU at the beginning of 2019; however, the actual number is estimated to be much higher, with some pointing to [1.2 million](#) UK nationals in the EU. Discrepancies in estimations may be explained by varying registration requirements in EU Member States. For [example](#), France does not require EU citizens to register with the authorities. In Spain, the number of UK citizens would also appear to be much higher (up to 1 million) than the officially [estimated](#) 360 000 at the end of 2019.<sup>6</sup> Furthermore, since 2016, UK citizens in the EU have increasingly acquired the nationality of their host EU Member State. Finally, as free movement

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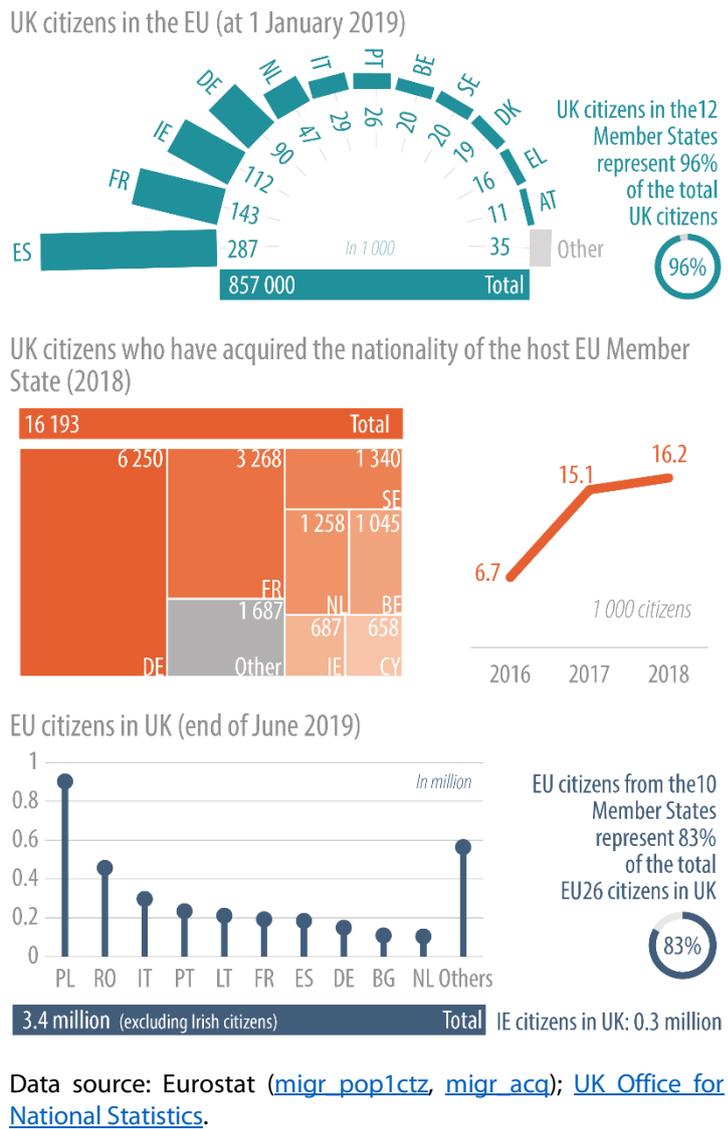
<sup>3</sup> Regarding access to benefits, see E.-M. Poptcheva, [Freedom of movement and residence: Access to social benefits](#), EPRS, European Parliament, 2014.

<sup>4</sup> The 2003 Directive was amended in 2011, by a Directive of the EP and Council extending the scope to beneficiaries of international protection. As Ireland and the UK did not take part in their adoption, they did not apply to these countries.

<sup>5</sup> Estimations at the end of June 2019: [Population in the UK by country of nationality](#), Table 2.1., Office for National Statistics.

<sup>6</sup> See the [reports](#) on *Brexit and the British in France* and *Brexit and the British in Spain*, by Brexit Brits Abroad, March 2020.

Figure 1 – UK citizens in the EU and EU citizens in the UK



continues to apply between the UK and EU until 31 December 2020, numbers are likely to change, both as regards the migration of EU citizens to the UK and UK citizens to the EU.

As of 1 February 2020, UK nationals are considered 'third-country nationals' for the purposes of EU law. They retain their status as Union citizens if they also enjoy the nationality of a Member State (dual nationality), perhaps having acquired the nationality of the Member State of residence. While the status of EU-27 nationals as Union citizens remains unaffected, as of 'Brexit' day, EU citizens residing in the UK find themselves in a non-EU country. Nevertheless, the UK withdrew from the EU on the basis of the [withdrawal agreement](#), in force since 1 February 2020, which sets out the conditions of an orderly separation between the UK and the EU. For the protection of EU and UK citizens' rights, the establishment of a transition period until 31 December 2020 (extendable once up to a maximum of one or two years, in accordance with Article 132 of the agreement) is significant.

During this period, the UK is to be treated as a Member State, meaning EU law continues to apply to and in the UK (with some exceptions). Moreover, Part Two of the agreement contains detailed legal provisions safeguarding most of the EU citizenship rights and particularly most guarantees of EU free movement law for the UK and EU-27 citizens who have made use of it by the end of the transition.

After the end of the transition period, citizens' rights (except for the persons covered by the withdrawal agreement), will depend on further arrangements to be agreed between the EU and the UK. In general, should there be no specific measures, EU citizens moving to the UK and UK citizens moving to the EU-27 Member States respectively will have to comply with immigration laws concerning third-country nationals.

### 3. Citizens' rights during the transition period

Up to 31 December 2020, citizens' rights remain unchanged, according to Part Two of the [withdrawal agreement](#), with a few exceptions.

Most rights derived from EU citizenship are maintained throughout the transition period, most importantly the [right to move and reside freely](#) within the territory of the Member States (Article 20(2) a). According to the European Commission, all [free movement rights](#) 'will continue until the end of 2020 as if the UK were still a member of the European Union. This means that EU citizens will be able to enjoy their EU free movement rights in the UK until the end of 2020. The same will apply for UK nationals in the EU'.

On 14 May 2020, the European Commission launched an [infringement procedure](#) against the UK for failure to comply with EU law on the free movement of EU citizens and their family members. The Commission's letter of formal notice argues that UK national legislation limits the scope of beneficiaries of EU free movement law in the UK as well as the possibilities for EU citizens and their family members to appeal administrative decisions restricting free movement rights. Furthermore, the UK's shortcomings in transposing Directive 2004/38/EC correctly, as well as other Treaty rules related to the free movement of citizens, of workers and to the freedom of establishment, may negatively impact upon the post-transition period implementation of the citizens' rights provisions in the withdrawal agreement. The UK authorities have four months to address the shortcomings identified by the Commission before the infringement procedure moves to its next stage.

In addition, the right to consular protection by the authorities of any Member State in the territory of a third-country where the national's Member State is not represented (Article 20(2)(c) and Article 23 TFEU) is not expressly excluded by the withdrawal agreement during the transition period. Similarly, the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language (Article 20(2)(d) and Article 24(2), (3) and (4) TFEU), are not expressly excluded by the withdrawal agreement during the transition period. Furthermore, UK nationals legally residing in the EU-27 would continue to benefit from these rights even beyond the transition period, as they also extend to third-country nationals in the EU, as mentioned above.

The exceptions to the application of EU citizenship rights during the transition period relate to the performance by UK nationals of some political rights deriving from EU citizenship (as per [Article 20 TFEU](#)) which are incompatible with the status of the UK as a third country and with the loss of its representation rights in the institutions and bodies of the EU. The withdrawal agreement (Article 127(1)(b)) expressly provides that a series of provisions of the Treaties and acts adopted by EU institutions and bodies will not be applicable in and to the UK during the transition period including, among others, Article 11(4) TEU, point (b) of Article 20(2), Article 22 and the first paragraph of Article 24 TFEU, Articles 39 and 40 of the Charter of Fundamental Rights of the European Union, and the acts adopted on the basis of those provisions:

- UK citizens are excluded from participating in a [European Citizens' Initiative](#);
- UK citizens will no longer have the right to vote and to stand as candidates in elections to the European Parliament and in local elections in their Member State of residence (see last section).

## 4. Citizens' rights after the end of the transition period

After the end of the transition period, two situations will apply. The EU and UK citizens covered by the withdrawal agreement will benefit from rights protected therein for their lifetime, as long as they continue to satisfy the conditions. The agreement also protects the rights of their non-EU/EEA family members, under the limits set by its provisions. However, those EU and UK citizens arriving in the UK and the EU respectively after the end of the transition period will have to comply with the immigration rules for third-country nationals in force at that time in the UK and in the EU Member State concerned.

The transition period is set to end on 31 December 2020 (Article 126 of the agreement). However, Article 132 allows a one-time extension to be granted for one or two years (until the end of 2022 at the latest), upon a decision of the Joint Committee governing the agreement, taken before 1 July 2020. Against this background, calls to [extend](#) the transition period have been made in the light of the coronavirus pandemic, which has delayed negotiations between the EU and the UK and could impact negatively upon EU citizens seeking permanent [residence](#) rights in the UK under the withdrawal agreement. Nevertheless, the UK government has excluded since the start the possibility of asking for an extension. The UK's decision not to request an extension to the transition period was [confirmed](#) by Boris Johnson, and noted by the parties, at the EU-UK high-level video-conference meeting that took place on 15 June 2020.

### 4.1. EU and UK citizens' rights covered by the withdrawal agreement

The withdrawal agreement sets out the legal provisions safeguarding most of the EU free movement rights for UK citizens in the 27 EU Member States and EU-27 citizens in the UK in [Part Two, on Citizens' rights](#). The provisions will apply as of the end of the transition period. In particular, the withdrawal agreement defines the categories of persons within its scope and contains provisions on residence and related rights, coordination of social security, equal treatment and non-discrimination. Those EU-27 citizens residing in the UK, and UK nationals resident in an EU Member State, on the basis of EU law prior to the end of the transition period, will retain most of their current rights under the applicable conditions and limits, which may vary depending on the category (e.g. permanent residents, workers, self-employed, job-seekers, students). Moreover, EU and UK nationals covered by the withdrawal agreement benefit from family reunification rights.

The persons covered will enjoy the rights set out in Part Two for their lifetime, unless they no longer fulfil the conditions set therein. For example, if they lose the right of permanent residence following an absence of more than five years from the host state, they also lose the protection of the withdrawal agreement and would have to re-enter the host state under the rules set for third-country nationals. Citizens' organisations and the European Parliament have pushed for a lifetime right of return, but this was not included in the withdrawal agreement. Persons [arriving](#) in the host state during the transition period will enjoy the same rights under the withdrawal agreement as those having arrived before the Brexit date and will be subject to the same restrictions and limitations.

Finally, while EU free movement law will continue to apply during the transition period there is an important limitation for those persons covered by the withdrawal agreement once the transition period ends. The right of [onward movement](#) across the EU for UK citizens (from the host EU state to another EU Member State, for stays of over 90 days), has not been secured. This is without prejudice to the rights of frontier workers covered by the withdrawal agreement. This issue could be addressed in the future partnership between the EU and UK.

The [persons](#) covered by the withdrawal agreement are:

- EU citizens resident in the UK, and UK citizens resident in the EU-27, in accordance with EU law before the end of the transition period and who continue to reside there thereafter;
- EU and UK frontier workers or frontier self-employed persons in the UK and EU;
- their family members, who are granted rights under EU law (e.g. spouses, parents, children under 21 years or dependent, grandchildren and grandparents) and who may join the EU or UK national in the host state (even [after the transition period](#), as long as they can prove a relationship before then), if they are living in a different country. Extended family members are also covered, such as dependent relatives and partners in a duly attested durable relationship before the end of the transition. For example, the spouse or durable partner can join the EU/UK citizen, but only if the relationship predates the end of the transition period. The [rights of extended family](#) members are subject to a series of limitations, although EU free movement law is already more restrictive towards this category: there is no obligation to admit these persons, only to facilitate their entry and residence. Nevertheless, the rights under the agreement of dependent family members before the end of the transition will be maintained, even after they are no longer dependent.
- future children, wherever they are born or legally adopted, under certain conditions.

However, the agreement does not protect certain family reunification rights deriving from CJEU case law:

- non-EU family members of an EU citizen [moving](#) to another Member State then moving back to that citizen's home Member State (following [Surinder Singh](#) CJEU case law);
- non-EU carers for minors who have not left their Member State of birth, and therefore are not covered by EU free movement law ([Zambrano](#) case law);
- in addition, future non-EU spouses or partners of the EU/UK national covered by the agreement, with whom the relationship began after the end of the transition period, will be subject to the national immigration rules applicable to third-country nationals.

#### 4.1.1. Residence and related rights

The withdrawal agreement [guarantees](#) the right of EU citizens and UK nationals, as well as their family members, to reside in the host state under currently applicable EU law (Directive 2004/38/EC). It also guarantees their right of exit from, and entry to, the host state, without a visa, on the basis of valid specified documents. Moreover, the agreement confirms that EU/UK nationals and their family members can acquire the right of [permanent residence](#) after five years of continuous legal residence, even if that period is completed after the end of the transition. During these 5 years, absences from the host state of up to 6 months a year or one longer absence of 12 months for serious reasons are allowed, in line with applicable EU law. UK and EU citizens residing legally in the host state for the period mentioned in Article 17 of Directive 2004/38/EC may enjoy the right of permanent residence earlier if they belong to certain categories, e.g. workers or self-employed persons who reach retirement age or who are incapacitated after two years of work in the host state. The right to permanent residence is lost after more than five years spent outside the host state.<sup>7</sup>

The rights of UK and EU citizens and their family members where covered will not be affected if they change status (e.g. from worker to economically inactive). However, at the end of the transition period, persons who enjoy a right of residence as family members of an EU/UK national will not be

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<sup>7</sup> The right of [permanent residence](#) under the withdrawal agreement can also be lost through an expulsion decision lawfully taken in accordance with article 20 of the agreement.

able to become right-holders in their own right.<sup>8</sup> Finally, as mentioned, the agreement does not contain [provisions](#) for free movement across the EU of UK nationals legally residing in an EU Member State.

To attest the rights granted under the withdrawal agreement, the UK and EU Member States may opt for a declaratory (those complying with the conditions automatically become beneficiaries of the rights) or a constitutive system (persons will be required to apply for a new residence status to attest to their rights under the agreement). The UK has opted for a constitutive system, requiring EU citizens to register with its [EU Settlement Scheme](#) to have their rights recognised under the withdrawal agreement. In the EU, 13 Member States have also opted for a [constitutive](#) system. Applications for residence status may be made by a deadline set at at least six months after the end of the transition period (i.e. by 30 June 2021), or three months after their arrival for those persons entitled to commence residence after the end of the transition period, whichever is later, according to the agreement. This deadline can however be extended by one year if the EU or the UK notifies significant difficulties in implementing the application system. Persons who have reasonable grounds for missing the deadline may be given an extended deadline to submit their applications. Criminal records may be taken into account in the application process. EU and UK citizens will have the right to request the host state to provide a document, which may be digital, attesting to their rights under the withdrawal agreement. EU law safeguards will apply to any decision to restrict the residence rights of the persons covered (see below).

#### 4.1.2. Workers, self-employed, students and economically inactive persons

The [rights](#) of workers and self-employed persons, including frontier workers, are protected by the withdrawal agreement beyond the transition period. The withdrawal agreement allows the UK and EU-27 states to require proof of sufficient resources and of comprehensive sickness insurance for economically inactive people and students when considering whether to issue residence documents after Brexit. [EU students in the UK](#) who start a course before the end of 2020 will be able to complete it and also to receive student finance if they meet the residency requirements (they must register with the EU Settlement Scheme); the same seems to be valid for [most of the EU Member States](#) (although no information is readily available for some Member States). Decisions on the recognition of professional qualifications of persons covered by the withdrawal agreement remain valid in the host country, while applications pending at the end of the transition period must be finalised.

#### 4.1.3. Social security benefits

Regarding the coordination of [social security](#) systems, the UK will have to align with future changes to the relevant EU legislation in the application of this part of the withdrawal agreement, although some exceptions are provided for,<sup>9</sup> subject to the agreement of the Joint Committee governing the agreement. The social security provisions address the rights of EU citizens and UK nationals in cross-border situations involving the UK and (at least) one Member State at the end of the transition period. Essentially, the persons covered will retain their [rights](#) to social security benefits, including

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<sup>8</sup> This applies to those [persons](#) whose residence rights are exclusively derived from their status as family member of the EU or UK citizen and means in practice that they have no autonomous right under the withdrawal agreement to be joined by their own family members. It does not apply to EU and UK citizens residing in the host state at the end of the transition at the same time as right holders and family members.

<sup>9</sup> These relate to changes to Article 3 of Regulation 883/2004 (listing the types of benefits covered by the coordination system), or any amendments to the extent to which cash benefits covered by the Regulation can be 'exported' from the UK to an EU country or vice versa.

pensions and healthcare, even if they decide to live in another country (i.e. the right to export benefits).

#### 4.1.4. Enforcement

Part Two (citizens' rights) of the withdrawal agreement can be relied on directly before the courts by the citizens covered. Moreover, the role of the CJEU in the application of the citizens' rights provisions is set out in Part Six of the agreement (Articles 158, 159). A UK court or tribunal may address a question for preliminary ruling to the CJEU, if it arises in a case started at first instance within eight years of the end of the transition period, or eight years from 1 February 2020 (the entry into force of the agreement) if the case concerns an application for residence documents during the transition period. The CJEU's preliminary rulings will have the same legal effects in the UK as in the EU Member States. The European Commission and an independent national authority to be set up for the UK will exercise oversight of the implementation of the citizens' rights part for the EU-27 and for the UK respectively; they will receive complaints from UK or EU citizens and their family members, and inquire into alleged breaches of their rights by administrative authorities. Moreover, as regards the application procedures for residence documents under the withdrawal agreement, access must be guaranteed to judicial and/or administrative redress procedures in the host state against any decision refusing to grant residence status.

#### EU citizenship rights for Irish citizens in Northern Ireland

Whereas the Common Travel Area between the UK and Ireland is not affected by Brexit, there are concerns about the effective exercise of EU citizenship rights by Irish citizens in Northern Ireland. Recognising that the people of Northern Ireland may choose to be Irish or British or both under the Good Friday/Belfast Agreement, the [Joint EU-UK report](#) published in December 2017, acknowledged that Irish citizens in Northern Ireland would remain [EU citizens after UK withdrawal](#) and would retain rights 'including where they reside in Northern Ireland'. That report included a commitment that the next phase of negotiations would 'examine arrangements required to give effect to the ongoing exercise of, and access to, their EU rights, opportunities and benefits'. The Protocol on Ireland/Northern Ireland annexed to the withdrawal agreement recognises that 'Irish citizens in Northern Ireland, by virtue of their Union citizenship, will continue to enjoy, exercise and have access to rights, opportunities and benefits ....' Moreover, Article 4 of the Protocol includes a commitment that 'no diminution of rights, safeguards and equality of opportunity' (as established by the Good Friday/Belfast Agreement) will arise from the UK withdrawal from the EU. Nevertheless, the withdrawal agreement does not go further in its provisions regarding Irish citizens in Northern Ireland. While it is assumed that they may use their Irish passport to travel to the EU-27, reside, study and find work under the conditions applicable to any other EU citizen, rights based on residence and/or reciprocity such as healthcare and social security related rights (including pension rights) may not be exercised effectively, unless specific arrangements are put in place to ensure them.

## 4.2. The EU Settlement Scheme (EUSS)

The UK chose a constitutive system to attest the rights of EU citizens in the UK, under the withdrawal agreement. The [EU Settlement Scheme \(EUSS\)](#) was launched on 30 March 2019; it is open to EU nationals, as well as EEA and Swiss citizens,<sup>10</sup> who must [apply for the EUSS](#) to remain legally in the UK beyond the end of the transition period. Applicants who have five years of continuous residence are granted 'settled status', meaning they have the right to reside permanently in the UK, under essentially the same terms as under EU law. EU citizens who, by the end of the transition period, have not yet reached five years of continuous residence are granted 'pre-settled status', whereby

<sup>10</sup> The UK has concluded agreements on citizens' rights and coordination of social security systems with the [EEA countries](#) and [Switzerland](#), with provisions similar to the EU-UK withdrawal agreement.

they have the right to reside in the UK for a further five years, a period during which they could become eligible to apply to receive settled status. The application is free of charge and open until 30 June 2021 – six months after the end of the transition period – for those residing in the UK before the end of the transition, or three months after their arrival for those persons entitled to commence residence after the end of the transition period, whichever is the later. The deadline may be extended to allow applications from persons having missed the original deadline, for 'reasonable grounds' – although some have expressed [concerns](#) that in practice EU citizens missing the deadline will be subject to immigration enforcement measures.

The EUSS is open for applications from persons covered by the withdrawal agreement, but also to some persons with derived rights of residence who are not in the scope of the agreement. In this context, the UK government clarified that non-EU carers for minors or dependent adults who have not left their Member State of birth (*Zambrano* case law) are allowed to apply for the EUSS. Irish citizens, who are covered by the Common Travel Area, as well as EU citizens having arrived in the UK before it joined the EU, if they already had 'Indefinite Leave to Remain' status, are not required to apply for the EUSS (however, they may apply if they wish). Frontier workers will have to apply for the EUSS only if they wish to live in the UK; otherwise they must apply for a frontier worker permit from 1 January 2021. Applications for the EUSS are checked against three criteria: identity; residence requirements and suitability (which takes criminal records into account), as the House of Commons Library [explains](#). Applicants receive the decision via email and the proof of settled or pre-settled status is only available online. However, non-EU family members with settled status will get a biometric residence permit.

Settled status is lost after more than five years spent outside the UK (according to the withdrawal agreement), whereas pre-settled status is lost after two years outside the UK. Settled status may also be lost, after the end of the transition period, through deportation following a criminal conviction.

According to [UK government statistics](#) from April 2020, a total of 3 322 900 applications were received from EU citizens (including 6 200 from Irish nationals) during the previous year. In total, including EEA and Swiss citizens as well as non-EEA nationals (applying as family members), the EUSS had received 3 536 000 [applications](#) by 30 April 2020, of which 3 220 100 were concluded: 1 854 800 received settled status; 1 328 600 were granted pre-settled status; 700 were refused; another 25 800 applications were withdrawn or void and 10 200 deemed invalid. However, the [statistics](#) do not take multiple applications into account, e.g. individuals who were granted pre-settled status upon their first application and reapplied for settled status when they fulfilled the required five years.<sup>11</sup>

Since its launch, the EUSS has been [criticised](#), above all, regarding the choice of a constitutive instead of declaratory system. Other concerns relate to having wrongly granted [pre-settled status](#) to EU citizens who have been in the UK for longer than five years and who would be eligible for settled status, as well as to [delays](#) in processing EUSS applications. In addition, there is considerable concern that the scheme fails to account for the [situation](#) of certain groups of people, namely those who are not aware of the need to apply, are vulnerable, have difficulty with the online aspects of the system, or are unable to provide retrospective [evidence](#) of the time they have spent in the UK. Although the [government](#) has allocated funds for awareness campaigns (more than GB£1 million), to voluntary and community organisations in order to reach the most vulnerable individuals – estimated at around 200 000 (GB£9 million) – and has set up more than 300 centres across the UK

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<sup>11</sup> Also, according to the findings of a recent [study](#), it is not possible to compare numbers of people granted status with official EU population estimates.

to help people with their application process, the EU Settlement Scheme is reportedly still not working well for certain [categories](#) of people, in particular:

- children (between 450 000 and 650 000 EU, EEA and Swiss children had yet to apply to the Scheme as of February 2020), in particular those who are in abusive homes, in the care of local authorities or foster care, children born in the UK who are not British and whose parents are unaware of the need to apply, children with criminal convictions;
- women, in particular non-EU/EEA family members, who cease to become eligible due to the breakdown of the relationship with the EU/EEA national; women who are domestically abused and dependent on their partner for the required documents;
- homeless people, who are especially affected by the digital nature of the scheme, not only as regards the application process but also with regard to the proof of their status that comes only in digital form; this category is also more likely to lack identification proof and documentation proving the years spent in the UK.

### 4.3. Securing residence rights in the EU-27

In the EU-27, implementation of the withdrawal agreement, in particular as regards residence rights, has varied from one country to another. While 13 Member States opted for a declaratory [system](#), the other 14 require UK citizens to apply for a new residence status under the withdrawal agreement (see table 1). All Member States confer the right of permanent residence to EEA nationals and their family members after five years of legal uninterrupted residence, or even sooner, under the [conditions](#) of the Free Movement Directive and relevant CJEU case-law.

In February 2020, the European Commission issued an [implementing decision](#) establishing a uniform format across the EU for the residence document to be issued under both the declaratory and the constitutive approach, and for the document attesting frontier workers' rights. The document will take the form of the residence permit for third-country nationals as established by [Council Regulation \(EC\) No 1030/2002](#), delivered for a period of a minimum of five years and maximum of ten, and bearing the mention 'Article 50 TEU' or 'Article 50 TEU – Frontier worker', respectively. The European Commission also issued a [Guidance Note](#) to help Member States implement correctly the citizens' rights provisions of the withdrawal agreement. At this point, it is not known how many UK nationals have secured their status in the EU-27.

Table 1 – Residence rights of UK citizens – measures in the EU Member States

EU Member State	Measures	Deadline
<a href="#">Belgium</a>	Permits obtained before the end of the transition will be exchanged for a new residence document, see <a href="#">Loi relative au retrait du Royaume-Uni de l'Union européenne</a> , 3 April 2019.	Mid-2021
<a href="#">Bulgaria</a>	UK citizens with a valid residence permit retain residence rights in Bulgaria and can use the permit up to one year after the end of the transition period or up to the expiry of its validity; if they wish to remain in Bulgaria, then they must apply for the renewal of the residence permit or for the issuance of a new residence permit before the end of the periods indicated above. UK citizens and their family members have to submit an application for the issuance of a new document and (in the case of long-term residence) provide all necessary accompanying documents.	31 December 2021
<a href="#">Czechia</a>	UK citizens must apply before 31 December 2020 for either a Certificate of temporary residence (if resident less than five years in Czechia) or a Permanent residence permit (over five years). Family members of UK citizens with a Permanent residence permit who have lived in Czechia for over two years may apply for a Permanent residence permit (see <a href="#">Czech Republic Settlement Scheme for UK citizens</a> ).	31 December 2020 for residence applications

<a href="#">Denmark</a>	<a href="#">Residence</a> documents obtained by 31 December 2020 remain valid until a new residence document is issued. All British citizens and their family members residing in Denmark shall apply for a new residence document. The same applies to frontier workers, who work in Denmark when the transition period ends. The residence document serves as proof that the holder has a right of residence under the withdrawal agreement. Applications for a new residence document can be submitted as of 1 January 2021 to the Danish Agency for International Recruitment and Integration (SIRI). Applications may be submitted throughout 2021.	Throughout 2021
Germany	A new residence document with the mention 'withdrawal agreement' will be issued <i>ex officio</i> to UK citizens and family members who already possess a residence card or permanent residence card; these residence cards will lose their validity in any case on 1 January 2022. Those persons who are not already holders of residence cards must register their residence with the competent local authority for identification of foreigners. ( <a href="#">Draft law on the current adaptation of the Free Movement of Persons Act / EU and other provisions to Union law</a> , version as of 22 May 2020).	Six months after the end of transition, i.e. 30 June 2021 – deadline to register residence
<a href="#">Estonia</a>	Estonian identification cards held by UK citizens (issued prior to 31 December 2020) and residence permit cards held by their family members remain <a href="#">valid</a> until expiry when UK citizens and family arrived before the end of transition period. A <a href="#">new document</a> certifying the right of residence in Estonia is to be issued from 2021; there are plans to start issuing a new residence permit card (to replace UK citizens' identity cards) in the last three months of 2020 (see the Act on Amendments to the Citizen of the European Union Act and Other Acts (Withdrawal of the United Kingdom from the European Union) ( <a href="#">781 SE</a> )).	31 March 2021 (deadline to register residence; no deadline set yet regarding the new document)
Ireland	Common Travel Area – no changes.	n/a
<a href="#">Greece</a>	UK holders of a residence document (Registration Certificate of Permanent Residence Document) will be invited at the end of 2020 to exchange their residence document with new biometric residence permits (between 1 November 2020 and 31 December 2020). Those persons who are not registered are required to register with the competent police authorities by the end of 2020. All UK nationals living in Greece before 31 December 2020 will have to apply for the new title issued in the common format of Regulation (EU) 1030/2002. (Law 4652/23.01.2020)	31 December 2020
<a href="#">Spain</a>	UK citizens and family members must apply, before 31 December 2020, for their <a href="#">residence</a> certificate in Spain, or ask for the EU family member card, or for the permanent residence (if they have more than five years continuous residence in Spain). On this basis, they will be issued with a new document attesting their rights under the withdrawal agreement, the 'residence document with uniform format (TIE)'.	31 December 2020 for registering
<a href="#">France</a>	All UK nationals resident/living in France (with or without a residence certificate) prior to 31 December 2020 must make an application for a residence permit marked 'withdrawal agreement'. The application may be made <a href="#">online</a> , free of charge, starting in July 2020. The obligation to hold the residence permit will apply from 1 July 2021.	30 June 2021
<a href="#">Croatia</a>	All UK citizens and their family members must <a href="#">register</a> their residence/apply for a residence card. UK citizens granted temporary residence receive a Registration Certificate (' <i>Potvrda o prijavi privremenog boravka</i> ') in paper form, free of charge; if they wish, they may apply for a residence card (for a fee). UK citizens applying for permanent residence are issued a permanent residence card (for a fee). Family members are issued residence/permanent residence cards ( <a href="#">Act on EEA nationals and their family members (OG, 66/2019)</a> ).	n/a
Italy	If not yet registered, UK citizens must <a href="#">register</a> with the registry office of their place of residence before 31 December 2020. All UK citizens resident in Italy prior to the end of the transition period may ask their registry office for their certificate of registration ( <i>Attestazione di iscrizione anagrafica</i> ). Non-EU family members of UK citizens will have to register, according to the existing rules (Legislative decree <a href="#">6/2/2007, no 30</a> , transposing Directive 38/2004). Non-EU family members resident in Italy for more than five years must ask for a permanent residence card (valid for five years), under the applicable conditions.	31 December 2020 for registration
<a href="#">Cyprus</a>	Current residence documents may be voluntarily exchanged for a new residence document to be issued in the future. For those without residence documents, as of 1 January 2021, there will be a new residence procedure for UK citizens who	No deadline for UK citizens who can prove residence

	can provide documentary evidence of their residence in Cyprus prior to the end of the transition period (see also the <a href="#">document on implementing the withdrawal agreement</a> ).	prior to 31 December 2020.
<a href="#">Latvia</a>	UK citizens and their family members residing in the Republic of Latvia (their existing documents – eID cards or paper documents in A5 format – are valid until 31 December 2020, unless the document's validity period is shorter), or who will enter Latvia before 31 December 2020 and who wish to continue residing there, must submit, before 30 June 2021, an <a href="#">application</a> to the Office of Citizenship and Migration Affairs (OCMA) and obtain a new residence permit. Information about the procedure is expected to be released in June/July 2020.	30 June 2021
<a href="#">Lithuania</a>	Procedures are yet to be defined: until 31 December 2020, UK nationals residing in Lithuania have to apply for a residence certificate only if their current residence certificate expires. UK citizens and family members arriving during the transition period must register under the current EU rules. The Ministry of the Interior will draft specific legislation to implement the withdrawal agreement.	n/a
<a href="#">Luxembourg</a>	The documents issued to British nationals and their family members already residing in Luxembourg at the time of the UK withdrawal, or documents issued to British nationals and their family members arriving during the transition period, will be <a href="#">replaced</a> with new residence documents, which will be valid from the end of the transition period. The exact <a href="#">procedure</a> remains to be defined.	n/a
<a href="#">Hungary</a>	UK citizens already <a href="#">holding</a> a registration certificate/permanent residence card may apply for a <a href="#">national permanent residence permit</a> on preferential terms (without examination of the conditions of accommodation, means of subsistence and health insurance) once they reach three years of continuous residence in Hungary. UK citizens arriving during the transition period must get a registration certificate (valid for three years) and follow the procedure above. Non-EU family members also may apply for a national permanent residence permit after three years of legal residence (residence card or a permanent residence card valid for three years), subject to some conditions.	31 December 2020 for registration
<a href="#">Malta</a>	UK nationals settling in Malta during the transition period may apply for their <a href="#">new residence status</a> three months after their arrival in Malta and before 30 June 2021. Applicants who have the right to commence residence after 31 December 2020 must submit their application either within three months of their arrival in Malta, or before 30 June 2021, whichever is later. <a href="#">Identity Malta</a> will contact all potential beneficiaries who have a valid residence document for the change of status – a residence document valid for a period of 10 years will be issued ( <a href="#">Regulations</a> on the Residence status of UK citizens and their family members, L.N. 18 of 2020).	30 June 2021
<a href="#">Netherlands</a>	The Immigration and Naturalisation service ( <a href="#">IND</a> ) will send an <a href="#">invitation</a> to UK nationals and family members living in the Netherlands before 1 January 2021, to submit an application for a residence document under the withdrawal agreement (they must be registered in the Personal Records Database at their town hall). They must submit the application within four weeks of receiving the invitation. The new document is either a <a href="#">temporary residence document</a> (less than five years residence in the Netherlands) or a <a href="#">permanent residence document</a> (more than five years). UK nationals and their family members in possession of a permanent residence document will simply exchange it for the new version (no application required). <a href="#">Non-EU/EEA/Swiss family members</a> may have to first request a facilitation visa; then an application must be made online and only after that can they register with the Personal Records Database.	1 July 2021
<a href="#">Austria</a>	UK citizens and family members must apply for documentation of their residence rights under the withdrawal agreement. Further information will become available.	At least until the end of June 2021
<a href="#">Poland</a>	<a href="#">Confirmation</a> of having a residence permit or a permanent residence permit will be in the form of a document bearing the endorsement that it was issued in accordance with the withdrawal agreement. The documents (in a form resembling an identity card) will be issued by the relevant <i>voivodship</i> office for the place of the foreigner's residence. Therefore, UK citizens who have not obtained a residence certificate in Poland and who would like to stay and work there after the end of the transition period, should go to the <i>voivodship</i> office to obtain a residence certificate. During the transition period, their family members can apply for the following documents issued under the existing rules: an EU citizen's family member residence card and an EU citizen's family member's permanent residence card. UK citizens and their family members residing in	31 December 2020 for obtaining the residence certificate; no other deadline mentioned

	Poland will be entitled to apply for the documents with the mention withdrawal agreement from 1 January 2021. These documents will identify beneficiaries of the withdrawal agreement after the transition period.	
<a href="#">Portugal</a>	Portugal has chosen not to require a change of residence status for UK nationals and their families, so the procedure for issuing residence documents remains unchanged. Those with a permanent residence certificate (over five years resident in Portugal) are not <a href="#">required</a> to do anything, unless the certificate expires during the transition period, in which case they need to renew it. Those who have five years of residence may apply for permanent residence under the current conditions. UK nationals who arrive in Portugal before the end of the transition period, and who wish to remain, must register within the city hall of their area of residence. All UK citizens and family members legally residing in Portugal before 31 December 2020 and continuing to do so will be issued with new documents.	31 December 2020 for registering residence
<a href="#">Romania</a>	UK citizens must register their residence by 31 December 2020. Their existing <a href="#">residence</a> certificate will probably be <a href="#">exchanged</a> with a new certificate/card. Further information will become available in 2020.	n/a
<a href="#">Slovenia</a>	Before 31 December 2020, <a href="#">UK citizens</a> who are not registered must apply under the current rules for EU citizens for a <a href="#">residence registration certificate</a> from the administrative unit in the area of their residence (normally valid for five years); after which they must register their temporary residence within eight days of entering the country, or of being served the document, or of the date of taking up temporary residence. If they have resided legally for more than five years in Slovenia, they obtain a permanent residence permit that is valid for an unlimited period of time; they must also register their permanent residence.	31 December 2020 for registering
<a href="#">Slovakia</a>	On 31 December 2020, UK nationals and family members with less than five years' residence will automatically be given a further five years' permanent residence status. However they will have to request a new residence card from the police responsible for foreigners, before 30 June 2021: the five-year residence permit card. UK nationals and family members with permanent residence status must request a long-term residence card. However, these persons may opt, before 31 December 2020, for an EU residence permit card (both for less than five years and more than five years residence) but this will have to be exchanged again for one of the above-mentioned documents before 30 June 2021.	30 June 2021
<a href="#">Finland</a>	UK citizens must <a href="#">register</a> their <a href="#">residence</a> or apply for a permanent residence certificate. Starting from October 2020 (instructions will be issued later), UK citizens <b>must</b> apply to exchange their EU registration for a right of residence based on the withdrawal agreement. UK citizens <b>may</b> apply to change their permanent residence right granted before 1 January 2021 for a permanent right of residence based on the withdrawal agreement (not obligatory, but easier for travel in the Schengen area).	30 June 2021
<a href="#">Sweden</a>	During the transition period, the same <a href="#">rules</a> apply for UK nationals and their family members as before the withdrawal: those already residing in Sweden do not need to apply for a permit to be allowed to stay, work and study in Sweden during the transition period. The Swedish government <a href="#">has proposed</a> to amend existing legislation with regard to the rights of UK citizens and their family members, that would enter into force on 1 December 2020. Accordingly, UK citizens must apply for a new residence status; the <a href="#">Swedish Migration Board</a> will decide whether to grant residence status. A new document attesting the status will be issued free of charge. Also, a person who has a valid act of permanent residence shall be entitled to exchange that document free of charge for a new residence document, after checking, inter alia, identity. The proposal has yet to be submitted to the Swedish Parliament. The government also suggests that <a href="#">applications</a> for a new residence status must be made within 10 months from the proposed entry into force of the above-mentioned provisions (i.e. 1 December 2020).	Suggestion of a 10 month deadline as of 1 December 2020

On 14 May 2020, the British Cabinet Minister Michael Gove sent a [letter](#) to the Vice-President of the European Commission Maroš Šefčovič raising concerns about the EU Member States' implementation of the citizens' rights provisions in the withdrawal agreement in a number of areas. These relate to the insufficient communication campaigns addressed to UK nationals, the timetables in some Member States for submitting a residence application, the complex procedures put in place

by some Member States and the lack of information regarding measures to support vulnerable UK citizens in the EU to exercise their rights under the withdrawal agreement. The letter calls on the European Commission to address the issues identified in the letter. In his [reply](#), Vice-President Šefčovič emphasised that the European Commission is monitoring the situation in all the EU Member States to ensure the correct application of the withdrawal agreement and is encouraging the relevant Member States to start the application procedures already during the transition period. While pointing out the lower number of UK citizens in the EU compared to EU citizens in the UK, the letter underlined that both the EU and the Member States had undertaken efforts to communicate the relevant information to UK citizens in the EU and that national information campaigns had been launched or were about to be launched in all EU Member States. Finally, the classical administrative procedures planned by those Member States which opted for the constitutive approach are thought to be more accessible to all citizens than a digitalised system.

Following the [second meeting](#) of the Joint Committee governing the withdrawal agreement, on 12 June 2020, positive results were reported regarding the implementation of the agreement. On the key issue of citizens' rights, the Commission will continue to monitor both the situation of more vulnerable EU citizens in the UK that have difficulties applying digitally and the situation of UK nationals residing in the EU.<sup>12</sup>

#### 4.4. EU and UK citizens not covered by the withdrawal agreement

EU-27 citizens moving to the UK and UK citizens moving to one of the EU 27 Member States, as well as their non-EU/non-UK family members, after the end of the transition period (except those persons covered by the withdrawal agreement), will be subject to national immigration rules applicable to third-country nationals. However, some Member States may introduce more favourable conditions – as is already the case in Greece and Cyprus.<sup>13</sup> Furthermore, [mobility arrangements](#) might be agreed between the EU and the UK as part of the negotiations on their future relationship.

In the UK, [new immigration rules](#) for after 1 January 2021 were proposed in February 2020, aimed at introducing a points-based system for both EU and non-EU nationals to restrict low-skilled immigration. [Employers](#) across the UK have argued that the new approach will negatively affect a wide range of sectors, leading to labour shortages and higher prices for consumers. Moreover, in [Scotland](#) there have been calls to maintain EU citizens' free movement rights in that country, through a devolved or tailored regime for Scotland. The UK government has not yet introduced the planned Immigration Bill before [Parliament](#). At the same time, the government is currently [revising](#) the complex UK immigration rules system, expected to be completed by 1 January 2021. For visits to the UK for up to six months, EU citizens will not require a visa. In the EU, Member States will grant [visa-free travel](#) to UK nationals for up to 90 days within a 180-day period after 1 January 2021.

## 5. The European Parliament and citizens' rights

The European Parliament has consistently prioritised maintaining EU and UK citizens' rights after Brexit. In its [resolution](#) of 15 January 2020 on implementing and monitoring the provisions on citizens' rights in the withdrawal agreement, Parliament expressed concern at various aspects of

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<sup>12</sup> At a high-level video [conference](#) on 15 June 2020, UK Prime Minister Boris Johnson and the leaders of the three main EU institutions took stock of the negotiations for the future partnership agreement.

<sup>13</sup> Cyprus will apply the rules on third-country nationals after the end of the transition, but will facilitate entry visas for family members of UK citizens (free and accelerated procedure); Greece will also apply slightly more favourable conditions.

implementation of the EU Settlement Scheme in the UK (e.g. the high proportion of EU citizens granted pre-settled status only, insufficient outreach to vulnerable people; approach towards those who will miss the deadline). As regards the EU-27, the European Parliament urged a generous approach to protecting the rights of UK citizens and recalled its commitment to monitor the EU Member States' implementation of the citizens' rights part of the agreement scrupulously. Moreover, Parliament called for the future EU-UK relationship agreement to include ambitious provisions concerning the movement of persons. The Parliament also urged the EU and UK to guarantee future free movement rights across the EU for UK citizens covered by the withdrawal agreement, as well as their lifelong right to return to the host state – two of Parliament's longstanding demands. It also called on the EU Member States to guarantee voting rights in local elections for the citizens covered by the withdrawal agreement. Finally, the resolution proposes a reflection process for the EU Member States, to find solutions within the limits of the Treaties to maintain EU citizenship rights for UK citizens.

## 6. Participation in elections

As mentioned in section 3 above, as of 1 February 2020, UK citizens no longer have the right to vote and to stand as candidates in elections to the European Parliament and in local elections in their EU Member State of residence. However, as regards the latter this loss of rights is not straightforward, as national measures may provide for the continuation of these rights, under defined circumstances.

### 6.1.1. Elections to the European Parliament

As no European Parliament elections are scheduled during the transition period, the lack of application of the relevant Treaty provisions has no practical implications. (This provision would, however, have been more important had the withdrawal agreement been ratified by the original deadline, and come into force two months before the 2019 European elections.) In any case, as of 1 February 2020, the UK is no longer represented by Members in the European Parliament, therefore, even if there had been elections to the EP scheduled during the transition period, UK nationals would have lost the right to vote and stand as candidates in the European elections organised by the UK (or indeed those organised in the EU country of residence). In the EU, one Member State, [Denmark](#), will allow UK citizens who are permanent residents before the end of the transition to vote and stand in EP elections. EU citizens residing in the UK will vote in future European elections from 2024 on according to the procedures established by the national legislation and authorities of their home Member State.

### 6.1.2. Municipal elections in the country of residence

Reciprocal [voting rights](#) for EU citizens in the UK, and UK citizens living in the EU, are not part of the withdrawal agreement negotiations. Furthermore, in accordance with the withdrawal agreement, UK citizens in the EU-27 will not have the right to vote and stand in local elections during the transition period; however, this does not prevent more favourable national measures.

The withdrawal agreement is also silent on the voting rights of EU citizens in the UK, and official documents indicating the position of the UK government on the matter of the participation of EU citizens in UK local elections are lacking. The House of Commons Library [stated](#) that 'existing legislation will need to be amended to remove voting (and candidacy) rights from EU citizens for local elections after Brexit. If this does not happen before the May 2020 local elections, the Cabinet Office would be expected to make an announcement to clarify that EU citizens can still stand and vote in them'. In the meantime, the [local elections](#) planned for May 2020 were postponed to

May 2021, due to the coronavirus pandemic. It is assumed that EU citizens resident in the UK will retain the right to participate in local elections, as the UK government reportedly does not intend to [amend](#) the existing legislation in order to remove their voting rights in the short term. Moreover, Scotland and Wales are responsible for their own electoral legislation. On 20 February 2020, the Scottish Parliament passed the [Scottish Elections \(Franchise and Representation\) Act](#), which received royal assent on 1 April 2020, extending the right to vote in Scottish local government and Scottish Parliament elections to all foreign nationals legally resident, not only EU citizens. A similar act was passed in Wales (the [Senedd and Elections \(Wales\) Act 2020](#)), which received royal assent on 15 January 2020: it extends the right to vote in the National Assembly elections to all qualifying foreign nationals.

Bilateral treaties have been concluded between the UK and certain Member States ([Spain](#), [Portugal](#) and [Luxembourg](#)), to reciprocally allow citizens to take part in local elections. Accordingly, nationals of these three states legally resident in the UK ('habitually' resident) have the right to vote and stand as candidates in local elections in the UK subject to the same conditions as UK nationals. The UK government has declared its [intention](#) to secure such bilateral treaties with all the other EU Member States. In addition, citizens of Ireland, Cyprus and Malta have the [right to vote](#) in all UK elections based on arrangements independent of their accession to the EU.

Regarding the situation of UK citizens in the EU, Member States have taken different approaches.

The bilateral agreements concluded between the UK and Spain, Portugal and Luxembourg give UK nationals, who are legally resident for a certain number of years, the right to vote and stand as candidates in their local elections, subject to the same conditions as their nationals. The [Agreement](#) between Spain and the UK provides that in order to exercise their right to vote and stand as candidates, UK nationals must have legally and uninterruptedly resided in Spain for at least three years prior to their request to register with the Electoral Census. The [Agreement](#) between Portugal and the UK provides that UK nationals must have legally resided in Portugal for more than three years and be registered in the Portuguese Electoral Census. To acquire the right to stand in local elections, UK nationals must have been legally resident in Portugal for more than five years. However, those UK citizens who were entitled to register to vote and stand as candidates in local elections in Portugal prior to 1 February 2020 will maintain that right. The UK-Luxembourg [Agreement](#) states that, in order to retain the right to vote and stand as a candidate in Luxembourg, a UK national must have been legally resident in Luxembourg for at least five years, including an uninterrupted period during the last year prior to application for registration. This is a legal [requirement](#) under Luxembourg law, which applies to all foreign nationals (EU and non-EU), based on a [derogation under EU law](#).

UK citizens resident in [Ireland](#) are entitled to register to vote with the relevant authorities for local and national parliamentary elections on the same basis as Irish citizens. As UK citizens resident in [Malta](#) had the right to vote in local council elections prior to Malta's EU accession, this right will continue; however, they will not be able to vote in general elections in Malta. In Cyprus, UK nationals are no longer eligible to [vote](#) (and stand) in local elections.

In other [EU countries](#), UK nationals may take part in some elections, under certain conditions:

- Hungary (vote in local elections if permanent residence before the end of the transition);
- Belgium (vote in local elections if residence of more than five years; only Belgian and EU citizens can stand as candidates in local elections);
- [Denmark](#) has two regimes in place: i) if permanent residence on the date of UK withdrawal and since, the right to vote and stand in local, regional and European

Parliament elections, as EU citizens; ii) UK nationals moving to Denmark after 31 January 2020 will be able to vote and stand in future municipal and regional elections as third-country nationals, if they have had permanent residence for the last four years prior to the election;

- [Estonia](#) (as non-EU nationals, the right to vote in local elections, if long-term residence permit or permanent residence; they are not allowed to stand as a candidate);
- [Finland](#) (as [non-EU nationals](#), right to vote and stand in municipal elections, if two years of uninterrupted residence in Finland);
- [Lithuania](#) (if permanent residence, i.e. more than five years, right to vote and stand in local municipal elections only);
- Slovakia (vote and stand in local elections, if permanent residence);
- [Slovenia](#) (vote in local elections, if permanent residence);
- [Sweden](#) (as non-EU national, right to vote and [stand](#) in regional and municipal elections, if registered and living for at least three consecutive years in Sweden).

For the rest of the Member States, for the time being, UK citizens as non-EU nationals will not be able to exercise franchise rights in local, national or European elections. The [Netherlands](#) are still considering the measures to take; ongoing talks with the [Polish](#) government aim to allow UK citizens to vote in local elections.

Little information is available as to whether Member States will allow already elected UK citizens to retain their mandate until completion. For example, France announced that UK citizens would not be able to vote and stand as candidates in the local [elections](#) in March 2020, but British councillors already elected will keep their mandate until the renewal of the local councillors.<sup>14</sup> The agreements with Spain and Portugal provide that the tenure of individuals who have already been elected in local elections would not be interrupted. Various citizens' rights [organisations](#) are advocating the maintenance of [voting rights](#) for all EU and UK citizens resident in the UK and EU.

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<sup>14</sup> The Covid-19 pandemic has impacted the local elections in France, with only one round of voting having been held, on 15 March 2020; the second round has been postponed to 28 June 2020.





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This EPRS paper analyses the implications of Brexit for the rights of both European Union and United Kingdom citizens and provides an overview of the rights protected by the Withdrawal Agreement, which entered into force on 1 February 2020, as well as of the national measures envisaged by the UK and the EU Member States to give effect to the relevant provisions thereof.

As a result of the UK leaving the EU and becoming a third country, UK citizens are no longer EU citizens and they will therefore lose a series of rights based on EU citizenship once the transition period provided for in the agreement expires. Currently, UK and EU citizens may still move to the EU and the UK respectively, under the applicable EU rules. Beyond the end of the transition period, the agreement guarantees the rights of EU and UK citizens who had made use of their freedom of movement rights by the end of 2020.

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