

**BRITISH IN EUROPE POSITION PAPER ON THE DRAFT WITHDRAWAL AGREEMENT 19
MARCH: FOR THE NETHERLANDS PARLIAMENT**

On 19 March 2018, the EU and the UK ‘signed off’ on Citizens Rights in the draft Withdrawal Agreement released on that date, stating that they will now be protected, and this agreement was confirmed by the European Council on 23 March 2018. While true for those who live and work or are retired in one country and do not wish or need to move across the EU to live or for work, thousands of UK nationals in the EU27 will be deprived of their current EU rights to earn a living legally under the terms of the agreement.

Main areas of agreement:

- confirmation of rights of residence in the host state and the possibility to acquire permanent residence or whichever status replaces it;
- right of equal treatment in host state;
- rights to work in host state;
- right to have most (but not all) professional qualifications already recognised in host state continue to be recognised in host state;
- social security coordination, reciprocal healthcare, and the aggregated pension system continues in host state.

Which rights are we losing?

- Continuing free movement, which is the right to move and reside freely across the EU, and which includes the right to move to live and work in other countries as well as visa-free travel.
- Right to set up a business across the EU and have our professional qualifications recognised beyond the country we live or work in.
- Some professional qualifications not covered at all.
- Right to provide cross-border services as self-employed people.
- Right to return to the UK in the future with non-UK spouses under EU rules rather than stringent UK immigration rules – we will have to show that e.g. we have a job and earn a specific amount per annum to bring our EU or non-EU spouses into the UK in future
- Right to future family reunification with future spouses or family members

Gaps in the draft Withdrawal Agreement

These above rights are rights that we have now so this means there are many gaps in the agreement and how these might be filled by EU rules on third country nationals or the future EU/UK relationship is unclear:

- The future EU/UK relationship depends on the UK’s negotiating position and could take years to agree.
- It is also not clear that EU third country national (TCN) legislation would simply plug the gaps – there is no clarity on whether and how it would apply (and this is complicated as by falling under certain TCN legislation, the application of other legislation is ruled out)
- Potentially four layers then: Withdrawal Agreement, EU TCN legislation and the provisions of the EU-UK future relationship, as well as national law where it applies to us in parallel with EU TC legislation as third country nationals in our country of residence.

Some specific problems

Article 17: How do we secure our rights? What registration system will apply?

There is also uncertainty about how we will secure our rights: EU27 countries will have two options:

- **OPTION 1:** They can adopt what's called a declaratory system, in line with current EU law, which mirrors what happens now and simply confirms the rights that we already hold, whether as permanent residents (5 years or more) or temporary residents (less than 5 years). In other words, we would not have to apply for a new residence status.
- **OPTION 2:** They can adopt a constitutive system. Under this, we would have to APPLY for a new status; the application process would include checks on whether people had been exercising treaty rights, as well as criminality checks. This is the equivalent of the UK proposal for EU citizens of 'settled status'; the concept of reciprocity has led to this being an option for each EU27 country if they wish to adopt it.

Former Article 32: this article stating that UK citizens would not have rights of continuing free movement, freedom of establishment, or to provide cross-border services removed

- This was removed from the draft Withdrawal Agreement because it was unbalanced and only set out what UK citizens are not able to do with no corresponding article concerning EU citizens in the UK.
- In addition, it did not add anything to the text and the substance of the text was not changed by its removal. The text still says that we only have rights in the country in which we are resident and **do not have continuing free movement rights**.
- So there is no clarity on free movement across EU, freedom of establishment outside country of residence, or the right to provide cross border services. But at least the agreement not longer says categorically that we do not have those rights.

Transition

- All Single Market rights continue for this period i.e. free movement, right to provide cross border services, freedom of establishment, recognition of qualifications etc.
- Those who arrive during transition will be able to benefit from the protection under the Withdrawal Agreement post end transition and they can also build up rights.
- But UK citizens in the EU will have no voting rights or other political rights as we will no longer be EU citizens.

Big Caveat

- Nothing is agreed until everything is agreed. So we are still living in uncertainty as there is no legally binding agreement until everything covered by the Withdrawal Agreement is agreed. And citizens' rights have still not been ringfenced from the rest of the negotiations.

British in Europe

18 April 2018