

The lost (even with a deal!) rights of 5 million citizens

Between the ‘legalese’ of the Withdrawal Agreement (WA) and the common perception that citizens’ rights have been resolved and will remain ‘broadly the same’, we want to set the record straight. In this paper we explain which fundamental rights we will lose after the end of the transition period under the Withdrawal Agreement (WA), unless the future UK/EU relationship were to fill any of these gaps.

the3million and British in Europe have fought for all these rights and more, right up until the very last moment of the negotiations ‘in the tunnel’, but we have now been told that the WA is final.

The Brexit negotiations were an opportunity for the EU to show the value of free movement, to ensure that 5 million citizens who seized all the opportunities that EU citizenship has given them would be protected, not penalised for embracing the rights they were given. 5 million citizens: most of whom did not have a vote in the EU referendum, and thus no say about Brexit. That opportunity has been missed.

As the WA has been dubbed a “diplomatic masterpiece” at the European Council on 25th November, it is worth reflecting on the true cost of the deal and look at what key rights will be lost:

1. Free movement for British citizens living in the EU

Helen is a British caterer in the French Alps. She and her husband won’t be able to **work in other EU countries** at short notice, which is what they do now during the summer months. They will only be able to work and have their catering qualifications recognised in France, which means they will lose almost half their annual income and won’t be able to replace it easily.

Rob is a British guitarist in a band who lives in Madrid. He and his band tour regularly across the EU and he spends at least six months on the road each year, and often gigs come up at short notice. He won’t be able to tour in other EU countries without some form of work permit/paperwork and this will severely restrict his ability to respond to offers of gigs at short notice and thus significantly affect his income.

Why? Because the WA only protects rights for British in Europe in their country of residence, their **continuing free movement** rights have been taken away.

2. Lifelong right of return for EU citizens in the UK

Luis is French, single and has lived in Bristol since he was two years old. His parents moved back to France some years ago and his ageing father has recently been diagnosed with Alzheimer’s. If Luis wants to go back to France to help his mother look after his father, and this takes more than 5 years, he will **lose his settled status** rights to move back to his life in the UK (which he would have been able to do had the UK stayed in the EU). Instead, he will face whatever immigration rules are in force at the time, as though he had never lived in the UK.

Why? Because the WA only insists that rights may **lapse after an absence** of a minimum of **5 years**, and the UK has chosen to use this minimum. Other member states may well do the same.

3. Protection from inadvertently becoming undocumented, illegal citizens

Mary is British and has lived in an EU member state for many years and, now in her 80s, lives in sheltered accommodation and has mobility problems. She does not have any children and her husband died recently. Post Brexit, she misses the deadline to apply as resident under the new settled status rules implemented under the Withdrawal Agreement. She had received mailings and seen adverts on TV, but she did not think any of it applied to her. A year after the deadline it becomes clear that she is now living in the country illegally.

Agnieszka is Polish, and 10 years old. She has lived in the UK since she was 2. Her parents do not realise that settled status is anything to do with them, and therefore they do not apply for themselves or their daughter. When Agnieszka tries to get a job when she is 19, she finds out that not only is she not entitled to work, but that she is an illegal citizen who will face deportation.

Why? The WA gives countries the choice of adopting a constitutive system (failure to have a document after the deadline implies lack of legal status) or a declaratory system (failure to have a document after the deadline does not imply a citizen not having a right, it only means their right has not been documented). The UK has chosen a constitutive system. It looks as if the majority of EU countries will follow suit in choosing a constitutive system. This choice has the most severe implications in those countries which did not already have a compulsory registration system (the UK and France) and are therefore most likely to have undocumented citizens.

4. EU family reunification rights for returning UK and EU citizens to their country of origin

Pieter is Dutch and living in the UK. If he needs to **go back to the Netherlands** after Brexit to look after his ailing mother, his British wife will face the stringent third-country immigration hurdles of the Netherlands. She will need to be able to speak Dutch and they will have to prove a stable and secure minimum income between them. Given that Pieter is moving to care for his mother and therefore may not be working for a period, and his wife was not economically active, it may be difficult to satisfy these conditions.

The exact same in reverse would apply to Sarah who is a self-employed British citizen living in Germany with a German spouse. Sarah's father lives in the UK. At some point after the end of the transition period, Sarah's father becomes unable to live independently. If Sarah wants to **move back to the UK** she will find it extremely difficult to bring her economically active German spouse. This is because Sarah herself (rather than her husband) will need to prove a gross annual income of £18,600 (or satisfy a high savings requirement), and, as a self-employed person, this will be difficult, not least because self-employed people also face a challenging additional documentary burden.

Why? Because a so-called "**Surinder Singh**" right, which allows EU citizens to return to their country of origin along with their family members, has not been included in the WA.

5. Full family reunification rights

Esther is a Swedish citizen living in the UK with a British husband and children. Her mother lives in Sweden, and looks after Esther's **sister** who is disabled. If Esther's mother passes away, Esther would like to be able to bring her sister to the UK to live with them so she can look after her. She would have been able to do this while the UK was part of the EU, but now it will not be possible.

Why? The WA has only agreed to protect **family reunification** to direct dependent ascendants and descendant family members, and a dependent sister does not fall into these categories.

6. Freedom of establishment and EU-wide recognition of qualifications for British citizens in the EU

Jane is a British architect currently living and working in Germany, married to a German citizen. She has worked as an architect whilst living in various EU countries in the past, including Italy. They could return to Italy in the future, where in principle she can live and work since she can rely on the EU directive as a third-country family member of her German spouse. However, in practice she won't be able to work, as she will not be able to work as an architect easily in Italy.

Why? The WA has only agreed to recognise British citizens' **professional qualifications** in their country of residence and their country of work if they meet the definition of a cross-border worker, rather than throughout the EU27 Member States. She will also have no right of establishment in the EU outside of Germany.

7. Voting rights in local and European elections will be lost in many cases

Susan, a British citizen who has been resident in France for 18 years, is currently able to vote for, and stand as a candidate in, French local elections and French European Parliament elections. She was not able to vote for UK MEPs, or in UK general elections or the EU Referendum since she was resident outside the UK for longer than 15 years. After Brexit, she will not be able to vote anywhere and **will be completely disenfranchised**.

Michel, a Belgian citizen resident in the UK, is currently able to vote for, and stand as candidate in, local elections in the UK. He is also able to choose whether to vote for UK MEPs or Belgian MEPs. After Brexit, it is currently not clear whether he will be able to retain local election voting rights. Furthermore he will lose all rights to vote in the European Parliament since Belgium does not allow its citizens abroad to vote for Belgian MEPs unless they reside elsewhere in the EU. Michel **risks becoming completely disenfranchised**.

Why? Because the EU Commission and EU27 Member States have stated that **voting rights** (both for its resident British citizens in local elections, and its citizens abroad in European elections) are a matter of national sovereignty, and are therefore not prepared to come to an UK-EU wide agreement. As far as local elections in the UK are concerned, the UK promised early on that EU citizens covered by the WA could keep their local election voting rights, but this has not been enacted (however Wales and Scotland have stated that they will maintain the voting rights of EU citizens in the Welsh Assembly and Scottish Parliament, and aim to also maintain them in local elections.)

8. Legal, future-proofed, certainty for settled status rules in the UK

Xenia is a Greek citizen who has lived in the UK for decades but has never been able to work because she was looking after her son with a disability, and in addition, she never had Comprehensive Sickness Insurance because she was never made aware of the need. This means that she is currently not able to get Permanent Residence, however the UK Government has promised unilaterally to go beyond the WA, and grant settled status to EU citizens only based on a residence test, which means that Xenia is able to get settled status. However, she is **extremely anxious that these rules might change** (possibly by a change of government) before she is able to obtain the status.

Why? Partly because the settled status rules are in **secondary legislation** like all immigration rules, which means they can be (and frequently are) changed without significant parliamentary scrutiny. And partly because the EU Commission and the UK did not agree to attach a **Protocol** to the WA, describing how the UK would implement settled status, which would have given these promises a legal status under international treaty.

9. Students - home fees

Josh is 15 years old and has been living in Austria for one year. Both his parents are British and have moved around a lot for their careers – they are both musicians. Josh would like to go and study in the Netherlands but is worried that this may not be possible after the transition period because he will be subject to international fees outside of Austria and his parents could not afford to pay them.

Why? The WA provides Josh with the right to pay the **same fees as an EU citizen at an EU university but only in his state of residence**. As he lives in Austria, The Netherlands would have the option of charging Josh international fees. He could go to the UK but the UK has a **requirement of three years residence in the UK** to qualify for home fees so he may also be charged international fees in the UK after 2020.

10. Students – recognition of future qualifications

Hanna is 16 years old. She is Estonian and has lived in the UK with her parents since she was four. She wants to study accountancy at university in the UK, which would see her graduating in 2024. Her parents are planning on returning to live in Estonia when Hanna finishes university. She is worried that with a UK accountancy degree she might then find herself unable to work elsewhere in the EU27 after she graduates in 2024. She can't become a dual national and doesn't want to risk not being able to join her parents in Estonia in the future. She doesn't know whether to apply for university in the UK or in Estonia.

Why? The WA only provides for **recognition of professional qualifications in your state of residence**. After the end of the transition period, Hanna would have a third country (UK) accountancy qualification. She could apply to have it recognised in another EU country but she would have to go through much more onerous third country recognition procedures for professional qualifications and this might require further study or training which she cannot afford.

11. Protection from discrimination in the UK's 'Hostile Environment'

Beatriz is Portuguese, married to Gabriel who is a Brazilian citizen. Both are able to apply for settled status, but Gabriel receives a physical biometric permit, whereas Beatriz only receives a digital code. There is currently well-documented evidence that landlords and employers discriminate against applicants who do not have a document that they readily understand. Beatriz is extremely likely to encounter such discrimination if she has to convince a landlord or employer to enter a digital token (which will expire within a short timeframe) into a website in order to establish that she has the right to rent or work.

Why? The WA says member states must provide citizens proof of status under the WA, but gives them the choice to do so either with a physical or a digital document. The UK has elected to provide a digital code, which is not the same as a digital document that can be printed and shown to landlords and employers to demonstrate status.