

The loss of family reunification rights for the3million and British in Europe

The draft Withdrawal Agreement [WA] protects some (though not all) family reunification rights of EU27 citizens in the UK and British citizens in the EU27¹. This means that after the end of the post-Brexit transition period:

- An EU27 citizen in the UK who is covered by the WA [EUinUK] can be joined in the UK by certain limited family members as defined in the WA (e.g. an existing spouse, a child or grandchild, a dependent parent)
- Similarly, a British citizen in the EU27 who is covered by the WA [UKinEU] can be joined in their country of residence by those same categories of family members as defined in the WA

However, a related set of family reunification rights (also known as “Surinder Singh” rights²) is not covered by the draft WA, which means that after the end of the post-Brexit transition period:

- An EUinUK citizen who wants to return to their country of origin with any non-EU27 family members will face their country’s domestic immigration regulations for those family members
- A UKinEU citizen who wants to return to the UK with any non-British (whether non-EU or EU) family members will face the UK’s stringent domestic immigration regulations for those family members

Example of an EU citizen living in the UK:

Pieter is a Dutch citizen living in the UK with a British spouse. His mother lives in the Netherlands.

If his mother becomes dependent on Pieter at some point in the future due to frailty or illness, she will be able to move to the UK due to the WA protecting Pieter’s right of family reunification.

However, if instead Pieter wants to move to the Netherlands to look after his mother there, Pieter’s British wife will face Dutch immigration laws which mean 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.

Example of a British citizen living in the EU:

Sarah 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.

Sarah faces the same choice as Pieter above, whether to move her father from the UK to Germany, or for her to move back to the UK to look after him there. The WA entitles her to move her father to Germany. However, if she instead moves 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 income of £18,600 (or satisfy a high savings requirement), as a self-employed person, this will be difficult.

¹ https://ec.europa.eu/commission/sites/beta-political/files/draft_agreement_coloured.pdf Article 9 1.(e)(ii)

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61990CJ0370>

the3million and **British in Europe** would urge the UK and EU negotiators to include the right to return to the country of origin with family in the Withdrawal Agreement, or to grant this right unilaterally at UK and EU-wide level, on the following grounds:

1. Legitimate expectation.

When this group exercised their rights to live and work and build families in another country, EU law applied and their legitimate expectation when they exercised rights of free movement was that they would have rights for life to bring their family with them if they returned to their country of origin someday. Instead, they find themselves **retrospectively** subject to a different and harsher set of rules.

2. Reciprocity

This issue is reciprocal for both sets of citizens covered by the Withdrawal Agreement; it affects both EUinUK and UKinEU. Both finite groups are losing a right they currently have as EU citizens.

3. Symmetry with family reunification

The right for an EU citizen to return to their country of origin with their family is intertwined with the right to bring over their family to the EU member state in which that EU citizen is residing. The former is excluded from the Withdrawal Agreement, whilst the latter is included. Thus, for example, UKinEU have better rights of family reunification in their host state than the UK, their country of origin. We would argue, regardless of the exact origin of the EU legislation, that these rights should be considered mirror images of each other, and that citizens faced for example with caring for an elderly parent should have a free choice between moving their parent or moving themselves.

4. Discrimination among citizens of different EU Member States

Without this right being added to the Withdrawal Agreement, or unilaterally agreed at EU-wide level, there will be discrimination between citizens from the different 27 non-UK EU countries. A Dutch citizen will find it far more difficult to return to the Netherlands with a British spouse, than a Belgian citizen returning to Belgium with a British spouse.

The wide variety of domestic immigration rules surrounding family reunification of third country nationals within the EU is described in this report by the European Commission³. It is unacceptable that EU27 citizens who exercised EU rights will need to lobby 27 different EU governments to hope to change their domestic immigration legislation. This applies equally to the British in Europe lobbying the UK government to change its legislation to allow for its citizens to return to the UK in future.

5. Vulnerability to future changes in legislation

In addition to the discrimination faced by both EUinUK and UKinEU, there is real anxiety amongst these citizens as to what the future holds. No-one can predict at what point in the future family members may require care, and there is no guarantee that current national immigration legislation may not become stricter over time. Within the Dutch community in the UK for example, the biggest concern after Dutch dual nationality legislation is worry about being able to return to the Netherlands at some unknown future date.

³ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_family_reunification_synthesis_report_final_en_print_ready_0.pdf