

Guaranteeing the rights of EU citizens in the UK and British citizens in the EU

Working towards a constructive, symmetrical solution

- Citizens' rights for both EU nationals in the UK and UK nationals in the EU must be protected in a **negotiated agreement** between the EU and the UK, fully detailed in the Article 50 Withdrawal Agreement, subject to **supranational jurisdiction**.
- This Agreement must have **direct effect** in the UK and EU27 to avoid any ambiguity in transposing it into national law; to allow citizens to be able to directly rely on the provisions of the Agreement before national courts; and so that our rights cannot be reduced by future governments.
- The UK's offer of **Settled Status** under UK Immigration Law is unacceptable.
- We propose a symmetrical, reciprocal solution for unlocking the negotiation deadlock of continuing **free movement rights**, the **2-year rule** and the lifelong rights of **children as well as adults**.
- Most importantly, without an early **ring-fenced** agreement on citizens' rights, uncertainty and anxiety will remain for over 4 million citizens.

Why we want a negotiated agreement

It is of paramount importance to us for the UK and the EU to reach a symmetrical negotiated settlement on citizens' rights.

- A Withdrawal Agreement with treaty status, force of international law, and which is directly effective and subject to CJEU jurisdiction is essential to provide the vital safeguards to protect citizens' rights
- Issues such as pensions, healthcare, social security issues, mutual recognition of qualification and economic rights are reciprocal citizens' rights issues and can only be agreed through negotiation, and will need to be detailed in the Withdrawal Agreement

Unilateral guarantees would obviously not address these issues sufficiently, and should only be considered as a lesser fall back position in case a negotiated agreement, including ring-fencing, were to fail.

The importance of supranational jurisdiction

The rights of British citizens in the EU27 will in principle fall under the jurisdiction of the European Court of Justice (CJEU), offering a further level of protection in addition to that provided by national courts. If EUinUK do not have access to this same supranational protection, what similar protection will they have in the event of misinterpretation of or difficulties in interpreting the Withdrawal Agreement? There are many examples where the UK (and other EU countries) have had a different interpretation of EU law, and the UK courts need to continue to be able to refer questions of interpretation to the CJEU.

Why Direct effect is essential

Direct effect¹ is a fundamental principle of European law and without it, any agreement on citizens' rights would be significantly weakened. Direct effect would allow individuals to directly rely on the provisions of the Withdrawal Agreement before national courts. The Withdrawal Agreement will need to be implemented in national law, and EUinUK need the protection of direct effect to ensure that there is a direct remedy before the UK courts in the case of incorrect implementation and that future UK governments cannot change legislation affecting their rights.

Why do we reject "settled status" for EUinUK?

"Settled status" and the accompanying administrative processes, means EUinUK have to **apply for** a new lesser status based in UK immigration law, rather than the UK government simply **confirming** a status already acquired under EU law, which is the solution that we propose. Under "settled status", EUinUK would no longer benefit from the right to family reunification or the right to leave the UK and return after two years.

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l14547>

EUinUK would also be subject to harsh systematic criminal checks, possible refusals of application for settled status, after which they would be deemed to be in the UK illegally, deportations and greatly reduced rights of appeal supervised by an overburdened Home Office prone to maladministration (e.g. recent reports of 100 deportation letters², threatened deportation of the Japanese wife of an EU citizen³, and the deportation of an asylum seeker despite three court rulings to the contrary⁴). Since 2012 the Home Office has systematically created a 'hostile environment' and EUinUK would come under this with settled status. We also reject the idea that the UK Home Office actually has the capacity to devise a new system to register 3 million citizens.

Overcoming the deadlock on free movement, the 2-year rule and the lifelong rights of children

Michel Barnier, has said that we should all **be able to live our lives as if Brexit never happened** and the EU negotiating directives clearly state that **our rights should be protected for life**. Yet, as the negotiations currently stand:

- A British lawyer living in France yet working in Luxembourg and Belgium, with children at school in Luxembourg faces being 'landlocked' with her/his permanent residence status, and right to work and recognition of law qualification being limited to France
- The British children of a British couple in the Netherlands will become third country nationals as soon as they turn 21 or are no longer dependent upon their parents. Dual nationality is not an option because the Netherlands does not allow it (similar issues arise in other countries such as Spain, and Austria)
- An Italian woman living in the UK will be not allowed to bring her elderly mother to the UK in the future to care for her as a dependent relative;
- If the same Italian woman moves back to Italy to care for her elderly mother, she may not be able to return to the UK if she is away for more than 2 years
- A British citizen in Germany wishing to return to the UK post Brexit will not be able to bring her German husband of many years without earning over £18,600, nor to bring her dependent German mother-in-law
- A Spanish family living in the UK would not be able to take a 3-year job in Sweden without losing their right to return to the UK

The principle of "reciprocity", which should be a safety net for all citizens concerned, is instead being used against us as a political weapon.

We, the 3 million and British in Europe, propose the following symmetrical solution to all the issues above:

- UKinEU to retain **full free movement rights**, that is to be able to live, work, and study across the entire EU27 territory, not just their country of residence at time of Brexit and even if they return to the UK or non-EU country for more than two years
- EUinUK to be guaranteed a **lifelong right to return to the UK** despite absences of more than 2 years. Pre-Brexit these citizens would have been able to do this; even if they lost permanent residence rights, they would have been able to return to the UK and start building up rights again through free movement
- These rights would apply to a finite, mortal group of citizens on both sides of the Channel. In order to ensure this, we propose that all living EUinUK and UKinEU citizens (including minors) have their rights detailed in the Withdrawal Agreement for life, and that they can pass these rights on to their future children. Children born to these citizens after Brexit will therefore have these rights but will not be able to pass them on in turn to *their* descendants. This would prevent families from being split in the short term, and would also ensure that the provisions of the Withdrawal Agreement would not continue in perpetuity

Ring-Fencing

Any agreement on citizens' rights needs to be ring-fenced from the rest of the Article 50 negotiations if our current uncertainty is to end. We need our existing rights confirmed in the Withdrawal Agreement and this agreement must come into force regardless of the outcome of the negotiations. The current uncertainty and anxiety has already lasted 15 months and cannot last another 18.

² <https://www.theguardian.com/politics/2017/aug/23/home-office-apologises-for-letters-threatening-to-deport-eu-nationals>

³ <https://www.theguardian.com/uk-news/2017/sep/18/fighting-the-home-office-womans-traumatic-two-year-battle-to-stay-in-uk>

⁴ <https://www.theguardian.com/commentisfree/2017/sep/15/the-guardian-view-on-deportation-contempt-of-court-and-of-decency>