

6 Brexit (or not) Scenarios

An analysis by the3million on the rights of EU citizens in the UK

The next 6 months bring with it enormous uncertainty as to what the future holds for EU citizens in the UK. Whilst there have been agreements partly drafted and proposals to register citizens, nothing is agreed until everything is agreed. Nobody knows exactly what will happen. Like our British in Europe partners, we recognise the need to set out the possible scenarios and consequences.

We analyse six different scenarios:

- [Scenario 1: No deal](#)
This is by far the worst-case scenario. It leaves us in a very precarious legal position, and lacks any arrangements that need UK-EU co-operation like pension aggregation. Without any legal guarantees between the EU and the UK, our rights are extremely vulnerable to future changes.
- [Scenario 2: A deal is reached, and the current Withdrawal Agreement \(WA\) is signed](#)
Whilst details are set out on what rights will be protected, the current Withdrawal Agreement is not good enough. It takes away many of our rights and breaks the promise that we could continue to live in the UK on the same terms as before exit.
- [Scenario 3: No deal is reached, but the UK and the EU legally ringfence the clauses on citizens' rights in the Withdrawal Agreement](#)
This is much better than a no-deal scenario, because any political promises of unilaterally guaranteeing the WA citizens provisions don't provide any legal guarantee at all. However, this **still** leaves us with the shortcomings of the current Withdrawal Agreement.
- [Scenario 4: A strengthened Withdrawal Agreement is ringfenced and signed now \(to be implemented in all Brexit eventualities\)](#)
If Brexit must go ahead, this is by far our best-case scenario. It provides greater security to EU citizens' rights. We have the European Parliament's support.
- [Scenario 5: No Brexit](#)
This would mean the very welcome retention of all rights that EU citizens in the UK currently enjoy under the EU Treaties' freedom of movement provisions. However, we will then need to ensure that the Permanent Residence process is reformed to ensure all EU citizens who have been resident in the UK are able to obtain this document without requiring sickness insurance or a minimum income.
- [Scenario 6. Brexit which involves joining the EEA](#)
EU citizens' rights under EU freedom of movement are likely to be retained as in scenario 5. However joining the EEA is more likely to happen at the end of transition period so will involve a longer period of uncertainty.

To understand our current rights as EU citizens, we have collected some useful sources and references:

- The European Commission produced [this leaflet](#)¹, in all the EU languages, describing the rights of free movement.
- EU information about [accumulated pension rights](#)² if you've worked in several EU countries
- EU information about [social security and benefits across the EU](#)³. Useful background from CEPS [here](#)⁴
- EU information about [Professional Qualifications](#)⁵
- EU information about [Academic qualifications](#)⁶



The following table sets out these rights, and compares them under our 6 scenarios.

A few notes on this table:

- This is a very simplified view to give an overall picture. For precise rights applicable to any individual or their family member, you would need to read the European Union Directive 2004/38/EC⁷ and/or consult an immigration lawyer
- Brexit Date (if applicable) is assumed to be 29 March 2019
- End of transition (only applicable if the UK leaves with a Withdrawal Agreement) is assumed to be 31 December 2020
- The table compares the rights of citizens who have lived in the UK for over 5 years, and have the right of Permanent Residence (PR), whether or not they have applied for a PR document. It also therefore assumes citizens will be eligible for the UK's proposed 'settled status'⁸
- In this table we do not address the fact that many such EU citizens are not currently able to get PR due to issues surrounding the rules concerning Comprehensive Sickness Insurance [CSI] and/or level of income. This is addressed later in the document.
- For comparison of rights of citizens who have lived in the UK for less than 5 years, see the leaflet above, the Directive, and the UK's EU Settlement Scheme Statement of Intent⁹.
- The table refers to the rights of EU citizens in the UK before the end of transition period, not to EU citizens moving to the UK after the end of transition period
- The table does not provide a comprehensive account of all rights of EU citizens, but highlights the main rights which are affected by Brexit
- The table does not consider the rights of EEA citizens, though many would expect to be similar to those of EU citizens

¹ <https://publications.europa.eu/en/publication-detail/-/publication/51cf67c4-a4ed-44a6-93cf-8120a7aa4c08>

² https://europa.eu/youreurope/citizens/work/retire-abroad/state-pensions-abroad/index_en.htm

³ https://europa.eu/youreurope/citizens/work/unemployment-and-benefits/index_en.htm

⁴ <https://www.ceps.eu/publications/brexit-and-social-security-eu>

⁵ https://europa.eu/youreurope/citizens/work/professional-qualifications/index_en.htm

⁶ https://europa.eu/youreurope/citizens/education/university/recognition/index_en.htm

⁷ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:EN:PDF>

⁸ <https://www.gov.uk/settled-status-eu-citizens-families>

⁹ <https://www.gov.uk/government/publications/eu-settlement-scheme-statement-of-intent>

Right, as a non-UK EU citizen living in the UK	Current UK in EU	No deal at all	Deal (current WA)	Ringfenced CR (current)	Ringfenced CR (strengthened)	No Brexit	EEA Brexit
Vote for or stand as a British MEP in elections to European Parliament ¹⁰	✓	✗	✗	✗	✗	✓	✗
Vote or stand as a candidate in local council elections ¹¹	✓	?	?	?	✓	✓	✗
Be joined by existing family members (spouses, [registered] partners, descendants and ascendants) of any nationality after the end of transition	✓	?	✓	✓	✓	✓	✓
Be joined by future spouses after 1 January 2021	✓	✗	✗	✗	✓	✓	✓
Be joined by other family members (siblings, cousins, aunts, uncles and others) who are dependent on you or members of your household or require your care	✓ ¹²	✗	✗	✗	✗	✓	?
Automatically acquire right of Permanent Residence after 5 years	✓	✗	✗	✗	✓	✓	✓
Move away from the UK and return (under terms of deal) after absence of up to 2 years	✓	?	✓	✓	✓	✓	✓
Move away from the UK and return (under terms of deal) after absence of up to 5 years ¹³	✓	✗	✓	✓	✓	✓	✓
Move away from the UK and return (under terms of deal) after absence of more than 5 years ¹⁴	✓	✗	✗	✗	✓	✓	✓
Entitlement to all social security benefits, equal to UK citizens	✓	?	✓	✓	✓	✓	✓
Social security aggregation: previous periods of insurance, work or residence in other EU countries are taken into account to calculate benefits in UK	✓	✗	✓	✓	✓	✓	✓
Pension aggregation: automatically receive state pensions from previous work in other EU countries	✓	✗	✓	✓	✓	✓	✓
Automatic mutual recognition of some professional qualifications (e.g. doctors, nurses, midwives, vets, dentists, pharmacists, architects)	✓	?	✓	✓	✓	✓	✓
Recognition of EU 'home title' professional qualifications (e.g. Italian 'avvocato' practicing in the UK without qualifying as solicitor or barrister)	✓	?	✗	✗	✓	✓	✓
Study in EU country of origin, on 'home fees' rather than international fees.	✓	?	?	?	✓	✓	✓
Provide cross-border services to EU27 (physically or remotely e.g. via internet)	✓	✗	✗	✗	✓	✓	✓
Return to EU country of origin, with UK or non-EU family – depends on that EU country's national immigration law.	✓	?	?	?	✓	✓	✓
Protection from deportation for offenders who do not pose a risk to public security	✓	✗	✗	✗	✓	✓	✓
Oversight and governance, including dispute mechanism and independent monitoring	✓	?	?	?	✓	✓	✓

¹⁰ Some EU citizens have the right to vote for EU MEPs in their country of origin, but this right varies per country, e.g. Belgium does not allow it for citizens residing outside the EU.

¹¹ Citizens of Ireland, Malta and Cyprus are, and remain, entitled to vote in both UK local elections and UK general elections.

¹² They have the right to have their entry and residence facilitated, see Directive for more details. They have no 'automatic' right, and are subject to the host EU country's discretion

¹³ Once Permanent Residence or 'settled status' has been obtained

¹⁴ Once Permanent Residence or 'settled status' has been obtained

Scenario 1: No deal is reached ('cliff-edge Brexit')

This is the most challenging scenario for EU citizens. Their status and their rights in the UK are in an extremely precarious position.

- EU Citizens will not immediately fall into a legal limbo, because the UK government passed the European Union (Withdrawal) Act 2018 (EUWA). The EUWA ensures that EU laws which applied on exit day will continue to apply after exit: this would include the rights of free movement. The Government has put in place amendments to Immigration Rules in order to implement a registration system to grant settled status to EU citizens resident in the UK for five years. This forms part of what has been agreed under the draft Withdrawal Agreement. It has been stated that this scheme will apply in case of no deal, though it is not clear whether those who have not acquired five years of residence will still be able to register for pre-settled status.
- Nevertheless, in this scenario, at 11:01pm on 29th March 2019, EU citizens **will** instantly face a legal limbo regarding some aspects of their status. Most immediately, the EUWA and amendments to the Immigration Rules cannot cover those rights which EU citizens have thanks to coordination agreements between the UK and the EU. This includes the recognition of pension entitlements they have built up here and would carry with them if returning to their country of origin; or access to healthcare that depend on coordination and payments between the NHS and health services in the EU.
- Moreover, the continuing application of EU law under the EUWA is unlikely to last long. As managing immigration is a priority for the UK government, it will likely quickly move to adopt new rules on immigration which will deviate from current EU law. If it intends to change the status of EU citizens already in the country, it can do so with few restrictions and fewer legal routes for EU citizens to object. Even if it starts by only changing the status of future EU immigration, this will have immediate (unintended) consequences for EU citizens already here. There would likely be increased (erroneous) discrimination by landlords, employers and service providers who fail to distinguish new arrivals from those already resident if the latter are not guaranteed a proof of their special status.
- Furthermore, changes to the status of EU citizens already in the UK can happen even without any real parliamentary debate. The EUWA gave the government new powers to “modify, limit or remove the rights which domestic law presently grants to EU nationals, in circumstances where there has been no agreement and EU member states are providing no such rights to UK nationals.”¹⁵ In addition, the Immigration Rules are implemented through secondary legislation which means that they can be easily changed with little parliamentary scrutiny. Just such a change in 2014 removed a clause¹⁶ protecting “Windrush citizens”.
- In the case of settled status rejections, citizens will not be able to lodge a complaint with the EU Commission or the CJEU for a violation of their rights. Furthermore, they will have no access to legal aid, and may struggle to access their data due to the immigration exemption to the Data Protection Act 2018¹⁷

Given that these issues have already been agreed in the draft Withdrawal Agreement, it would be far simpler for the EU and the UK to jointly ringfence and legally implement the deal already agreed (even though this deal has serious shortcomings). This would go some way to addressing the points above.

the3million and British in Europe sent a joint [open letter](#)¹⁸ to Dominic Raab and Michel Barnier on the 4th September 2018 to ask them to commit to strengthen and implement the agreement on citizens' rights, regardless of the outcome of the Brexit negotiations.

¹⁵ House of Lords Explanatory Notes on Delegated Powers within EUWA: <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0079/18079en07.htm>

¹⁶ Previously, all longstanding Commonwealth residents were protected from enforced removal by a specific exemption in the 1999 Immigration and Asylum Act. This clause was removed in the revised 2014 legislation. (https://www.huffingtonpost.co.uk/entry/windrush-home-office_uk_5ad61093e4b0edca2cbe405c)

¹⁷ <https://www.the3million.org.uk/gdpr>

¹⁸ <https://bit.ly/t3m-BiE-OpenLetterBrexitNegotiators>

Scenario 2: A deal is reached, and the current Withdrawal Agreement (WA) is signed

The current deal is not good enough for EU citizens in the UK, as it does not live up to the promise that "there will be no change for EU citizens already lawfully resident in the UK." Neither will these EU citizens "**automatically** be granted indefinite leave to remain in the UK and treated **no less favourably than they are at present**".

- We will be **forced to apply** for a new status. There is a high risk that many EU citizens who are now legally resident under EU rules could still fail to obtain that status. People who are rejected or who do not apply (they may not realise they have to) will be subject to the hostile environment or removal. Children whose parents do not apply on their behalf, and who will therefore not have the right documentation, risk becoming part of a future Windrush 2.0 scandal. The application is supposed to be simple, yet looks likely to be challenging for those who do fit within a narrow set of criteria suited to the scheme's tests.
- We will be **charged a fee** for this mandatory 'settled status'. Citizens with expired ID face additional renewal expenses
- The status will be in **digital format** rather than a physical document, which is highly likely to lead to discrimination with landlords, employers and other service providers. It will also create an unreasonable hazard for vulnerable groups of the population (for example, the young and elderly) who have low literacy in technology or no access to internet services. No plans have been made for these groups
- Even when 'settled status' has been acquired, an EU citizen will not benefit from the same 'permanent' residence as today. Whereas under EU law, a citizen needed to be a 'genuine threat' to UK society before being subject to deportation, after Brexit they may be at **risk of deportation** after a 12-month prison sentence.
- We will not be able to **return automatically** to the UK after an absence of more than 5 years
- We may **lose the right to vote** at local elections, and current councillors who are EU citizens may be forced to resign, while some of us will lose their right to vote in European elections (See Additional Information: Voting Rights)
- We will not be able to bring **future partners** under the right of family reunification, instead we will face extremely restrictive immigration rules. This will disproportionately affect young EU citizens
- Our children may be hit by **international student fees** if they choose to study in their EU country of origin, as home fees are related to country of *residence*
- Those practising certain **professions** under their home title may face restrictions (e.g. an Italian "avvocato" will not be able to continue practising unless they re-qualify as a solicitor or barrister)
- EU Citizens who provide **cross-border services** to the EU27 (physically or remotely via the internet), may be unable to do so after the end of the transition period
- The status of disabled citizens and their carers remains uncertain
- It is still not clear what an **Independent Monitoring Authority** for proper implementation of citizens' rights will look like, whether it will be independent of the UK, and what authority it will have. The draft WA simply requires the UK to monitor itself. We will only have the protection of the CJEU for 8 years after transition
- There is still no complete clarity as to who will be asked to have **Comprehensive Sickness Insurance**
- The WA does not cover us **returning to our EU country of origin** with our British or non-EU family (see Additional Information: Returning to EU country of origin)

the3million have raised their objections to the UK government's '[EU Settlement Scheme statement of Intent](#)'¹⁹ in a [paper](#)²⁰ published on the 16th July 2018.

the3million have set out [162 questions](#)²¹ on the Settlement Scheme, which to date have not been answered, despite promises to do so by June, and then July 2018.

the3million and British in Europe sent their latest [joint position paper](#)²² to the negotiators on the 29th August 2018, raising all these points above.

¹⁹ <https://www.gov.uk/government/publications/eu-settlement-scheme-statement-of-intent>

²⁰ <https://bit.ly/t3m-SOI-Response>

²¹ <https://bit.ly/t3m-162QuestionsToHomeOffice>

²² https://bit.ly/t3m_BiE_LastMileCitizensRights

Scenario 3: No deal is reached, but the UK and the EU legally ringfence the clauses on citizens' rights in the Withdrawal Agreement

In the event of the UK leaving the EU without signing a Withdrawal Agreement (i.e. a cliff-edge Brexit), the UK and the EU could still decide to honour the Agreement's provisions on citizens' rights.

However, political promises in this direction that commit unilaterally to implementing such provisions remain hollow if not backed by legal guarantees. Such legal guarantees can only be provided by a UK-EU Treaty, even if limited to citizens' rights. Legal solutions based merely on national law could at all times be revised, sometimes simply by secondary legislation created by the government.

Moreover, even if the Withdrawal Agreement's provisions on citizens' rights were to be copied into a separate UK-EU citizens' rights Treaty, it would suffer from the shortcomings of the Withdrawal Agreement as identified in Scenario 2, therefore all comments of that scenario also apply here.

Scenario 4: A strengthened Withdrawal Agreement is ringfenced and signed now (to be implemented in all Brexit eventualities)

The European Parliament set out various red lines on citizens' rights in its [14th March 2018 resolution](#)²³ on the framework of the future EU-UK relationship. These broadly align with the asks of the3million and British in Europe in its latest [joint position paper](#)²⁴.

To realise these red lines and demands, the Withdrawal Agreement needs to be amended on several issues.

These include:

- including future spouses in family reunification rights
- status being declaratory²⁵
- the procedure for obtaining status being simple, clear and free of charge
- guaranteeing future free movement rights across the whole EU for the British in Europe
- voting rights in local elections
- lifelong right to return for EU citizens in the UK
- protection against the expulsion of disabled citizens and their carers
- protection of procedural and appeal rights
- better monitoring and oversight mechanisms to ensure the protection of rights
- tuition fees – ensure that EUinUK can study throughout EU27 on home fees, and that UKinEU can study in the UK on home fees (currently 'home fees' are based on residence and EU membership, rather than on nationality)
- deportation grounds for those holding settled status being limited to current EU law grounds (for deportation of Permanent Resident holders)

In addition, the3million propose a [protocol](#)²⁶, to be attached to the Withdrawal Agreement. This protocol would ensure that the unilateral promises by the UK government, particularly in relation to the registration procedure (e.g. not to test for Comprehensive Sickness Insurance), are guaranteed at international treaty level.

The3million demand that [EU citizens' rights should be set out in primary legislation](#)²⁷, as was initially indicated in the December 2017 Joint Report, and ask for the Independent Authority to be set up as a EU-UK authority to ensure its independence.

Such a strengthened Withdrawal Agreement plus protocol should be ringfenced.. We ask that, in the absence of an agreement on the full Withdrawal Agreement by the European Council meeting of November, the UK and EU implement the (strengthened) citizens' rights provisions of the WA via a separate Citizens' Rights Treaty based on Article 50. This is the only way to ensure that EU citizens will be guaranteed our rights by Brexit day, and thus allow that EU citizens in the UK can put over two years of anxiety behind us and start moving forward again and building our futures in the UK.

²³ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2018-0069+0+DOC+XML+V0//EN&language=EN> paragraph 52

²⁴ https://bit.ly/t3m_BiE_LastMileCitizensRights

²⁵ This means that citizens will not need to have applied in order to gain a status

²⁶ https://docs.wixstatic.com/ugd/0d3854_a940bffb8cdb445d95776252188953f1.pdf

²⁷ https://docs.wixstatic.com/ugd/0d3854_d1770dd5911443c1ac4057325577f468.pdf

Scenario 5: No Brexit

There is much talk about various possible political outcomes over the next few months. This includes the People's Vote campaign, which may lead to the UK remaining in the EU. Freedom of Movement rights would then continue as they are now, and discussion of Citizens' Rights clauses in the Withdrawal Agreement would become redundant as there would be no further negotiation on UK withdrawal.

However, there is then much campaigning to be done in the UK, because EU citizens in the UK would then be thrown back to the current system of the dreaded 85-page Permanent Residence application with its 30% rejection rate. Careful scrutiny is required on whether EU law is respected as the UK tightens its approach to immigration.

With the 'settled status' scheme, the UK government promised not to test for Comprehensive Sickness Insurance (CSI), or 'genuine and effective work'. Therefore there will be EU citizens who have been resident in the UK for many years who would be able to obtain settled status, but are not currently able to obtain Permanent Residence.

the3million considers this unacceptable. This situation has arisen because the UK chose never to implement a registration system for EU citizens as most other EU countries have done. In addition, it allows all citizens who are 'ordinarily resident' in the UK to access the NHS, and never asks those citizens to obtain 'Comprehensive Sickness Insurance'. The first time people find out about the requirement for CSI²⁸ is when they come to the PR application process.

The EU launched [infringement proceedings](#)²⁹ against the UK stating that it breaches EU law not to consider access to the NHS as fulfilling the EU comprehensive sickness insurance requirement. the3million will continue to ask the EU Commission to take a final decision on these proceedings.

There have been highly disputable cases of deportation of EU citizens on the basis of alleged criminal records. The Home Office's policy of detaining and deporting rough sleepers from EU countries has been found to be unlawful.

During the last two years, there has been extensive coverage of the Hostile Environment Policy, and the failings of the Home Office³⁰. EU citizens have lost trust that they will be treated fairly, with each of their individual circumstances taken into consideration.

the3million will lobby the government for all EU citizens already in the UK to be able to obtain a physical EU Permanent Residence document if they choose to do so, by a **declaratory**³¹ system which is similar to the settled status proposal in that it **only tests for residence and proof of ID**, but does **not include systematic criminal checks**.

This would be the only equitable outcome for this finite group of EU citizens who have been in limbo for well over 2 years, and have faced extreme uncertainty over their future.

²⁸ CSI is a requirement for certain categories (self-sufficient and studying) of EU citizens

²⁹ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+P-2017-003659+0+DOC+XML+V0//EN>

³⁰ <https://www.the3million.org.uk/hostile-environment>

³¹ This means that citizens will not need to have applied in order to gain a status

Scenario 6. Brexit which involves joining the EEA

There is speculation that there may be support for the UK to be a member of the European Economic Area (EEA) after withdrawal as an EU member .

It is important to realise that if the Withdrawal Agreement is signed, this will contain legally binding text on the Irish backstop, the UK payments, citizens' rights and the transition period. In contrast, it will contain only a political heads of agreement about the future trade relationship.

This scenario is very similar to that of staying within the EU, since EEA membership respects the free movement of persons. However, it might well be that a decision on EEA membership is only taken during the transition period. In any case, implementation of EEA membership will only follow after the transition period. This requires further reflection on whether the measures provided in the draft Withdrawal Agreement, as well as the UK proposal for settled status and its intentions to introduce a registration system can have a life within the EEA scenario. The current proposed settled status and the Withdrawal Agreement's provisions on citizens' rights would need to be revised since they do not reach the standard of EU and EEA membership requirements.

Although EU law has no direct effect in EEA countries, citizens in these countries have very similar protection to EU citizens in EU countries, due to transposition of EU law and via the EFTA Court.

Additional Information: Voting Rights

It is welcome that the devolved governments of Wales and Scotland have indicated that they will allow EU citizens living in those nations to continue to be given a vote in the Welsh Assembly and the Scottish Parliamentary elections.³²

However, in many of the scenarios outlined above, we may lose the right to vote, and stand as candidates, in local elections. Current councillors who are EU citizens may have to resign. We will lose our voice in local politics, and our right to participate in the democracy that we live in.

David Davis has stated he wanted us to have that right, but it had to be reciprocated. The EU has stated it does not have a negotiating mandate to do this, and that it is down to individual countries.³³

At least 9 EU Member States allow third country nationals to vote in local elections.³⁴

Stripping a citizen of the right to vote is a decision that is usually only taken in the severest of circumstances, such as the imposition of a custodial sentence, and the European Court of Human Rights³⁵ has repeatedly ruled that even in that eventuality, any such measure should be proportionate.

³² <https://www.theparliamentmagazine.eu/articles/news/scotland-could-allow-eu-nationals-retain-voting-rights-post-brexit>

³³ HoC Exiting the EU Committee July 2018 <https://publications.parliament.uk/pa/cm201719/cmselect/cmexeu/1439/1439.pdf> paragraphs 24-27.

³⁴ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/exiting-the-european-union-committee/the-progress-of-the-uks-negotiations-on-eu-withdrawal/written/84016.pdf>

³⁵ Hirst v United Kingdom (no.2), European Court of Human Rights, [GC], no. 74025/01, ECHR 2005-IX

Additional Information: Returning to EU country of origin

While we are part of the EU, we are entitled to return to our EU country of origin with non-EU family members. For example, a Dutch national living in the UK could move to the Netherlands with a Chilean spouse under the rights outlined in EU Directive 2004/38, without that spouse being subject to strict Dutch immigration rules. It is important to realise that this is due to EU case law (see the 2014 EU case C-456/12 *O and B v The Netherlands*), known in the UK as the Surinder Singh route. (A Dutch national living in Chile would not be able to return to the Netherlands with their Chilean spouse, without fulfilling stringent income and other requirements)

After Brexit (or the end of the transition period if there is one) EU citizens in the UK will no longer be able to benefit from the Surinder Singh route if they return to their country of origin. This is because they are now no longer moving to their country of origin from an EU country.

The Brexit negotiators are not prepared to include this in the Withdrawal Agreement, as they say this agreement deals only with current rights rather than future decisions.