

Citizens' rights post-Brexit – the State of Play

31. January 2018 by [Jean Lambert](#)

If the agreement reached before Christmas between the EU and the British government on the progress of Brexit talks gave the impression that all was now settled and assured for EU citizens living in the UK and British citizens living in other EU countries, then sadly this is wrong.

From the outset of Brexit negotiations, the EU highlighted its three priority areas where solid progress and commitments would need to be reached before the two sides could move onto the next stage of Brexit talks. These three areas were the question of 'the divorce bill' – the financial settling of accounts on the part of the British Government, the issue of how to avoid a new border between Northern Ireland and the Republic of Ireland, and the question of rights of EU citizens post-Brexit.

Although sufficient progress was deemed to have been made in order to allow a new phase in talks begin, in reality – in all three of these areas – nothing was 100% agreed. In terms of citizens' rights, there remain some key outstanding issues to be solved despite some progress being made. Also, crucially, what was agreed has not been ring-fenced. This means that those rights that were agreed on in the Stage 1 talks are still not guaranteed and could perhaps be used again as bargaining tools as negotiations continue. Given the 'nothing is agreed until everything is agreed' position, it is disconcerting to see the British Home Office website advice to EU-27 nationals already changing to reflect the December negotiations.

This situation has not been widely reported and communications from the British Home Office indicate little of the limbo in which EU nationals in the UK and Britons in other EU countries remain. We in the European Parliament are, however, very aware that this issue is unsolved. We know that citizens and their lives are being used as bargaining chips and we are very clear this is unacceptable.

Worries about citizens' rights

Later this week the European Parliament will hold another public hearing on citizens' rights and we will pass another resolution reiterating that we will not back-down on this matter – without protection of citizens' rights, the EP's support cannot be assured.

What, however, are the key points that EU nationals are worried about?

For EU nationals in the UK, many campaigners are worried that the current agreement greenlights the UK's 'settled status' proposal. This requires over three million people to apply for the right to stay instead of being simply granted residence rights. The current registration system has an error rate of 10% and a rejection rate of 27%. This is likely to rise significantly when three million people have to apply for settled status. The British government has no plans in place to deal with the increased workload.

Also considering the constraints of the Home Office and its current hostile environment policy, which seeks to discourage illegal immigration, there are worries that the EU citizens most at risk such as carers, people with disabilities or victims of crime will struggle. Anybody could be at the receiving end of an erroneous deportation letter, which could also result in their bank accounts being frozen or access to free NHS healthcare denied.

The UK government is currently allowed to immediately expel EU nationals where they believe there is an abuse of EU rules. This is a very serious threat exemplified in how, until very recently, the UK government was deporting homeless EU nationals on the grounds they were abusing the right to free movement. Thankfully, due to the hard work of some committed NGOs, the British courts ruled the government was acting illegally. However, this is a clear example and precedent of what the “hostile environment” can look like in reality. Any appeal against deportation might only be possible once outside the UK.

Another issue that campaigners struggle with is the requirement for criminal checks on EU nationals applying for ‘settled status’. This could have real repercussions, and is unacceptable given that EU nationals are legally resident now.

Insecurity for citizens on both sides of the Channel

The EU has apparently conceded on the role of the European Court of Justice, with the agreement in its current form giving the Court jurisdiction over matters relating to EU nationals’ rights for only eight years. This is very worrying. What happens if, after eight years, the UK government introduces new legislation that threatens current rights? Given the aforementioned hostile environment policy, EU nationals could be forgiven for feeling less than secure with this solution.

The situation of British nationals in other EU countries is also far from secure. These Britons, who clearly cherish and have made full use of their EU citizenship, face having this taken from them against their will. This is terribly sad and is currently subject to a court case in the Netherlands, where a group of expat British claimants are arguing that after Brexit on 29 March 2019, anyone who had UK citizenship before that date should legally retain EU rights including freedom of movement and the right of residence.

Furthermore, continuing freedom of movement, i.e. the ability to move, reside and work in EU-27 countries other than the country of residence is still not assured. This particularly affects cross-border workers, especially the self-employed. It also matters to the children of Britons in other EU countries who would find their rights to study elsewhere in the EU-27 curtailed.

Questions around the rights of posted workers – people who work on short-term contracts in other EU countries – have not been agreed. Likewise, the right to be joined by a future spouse or partner, i.e. an undeclared relationship on Brexit day, is still not assured.

As with EU nationals in the UK, it increasingly appears that to have their rights assured Britons would have to apply for a new status, instead of having existing rights confirmed. 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’. And as with EU nationals in the UK, some people will struggle to find the proof that they meet the statutory requirements of ‘legal residence’ and the potential for bureaucratic mistakes is omnipresent.

One of the huge tragedies of this situation is that all the uncertainty, stress and anguish wrought on individuals as a result of these negotiations could have been avoided. Before formal discussions even began, the EU offered to guarantee that all British citizens in other EU countries would maintain their current rights. If the British government had reciprocated the offer, a fair and logical solution would have been reached and goodwill between negotiating partners would have been established. Instead we find ourselves in a constant state of chaos with ambiguity around people's rights and futures. This is intolerable and I and my colleagues will not rest until all current EU citizens' rights are clear, safe and assured post-Brexit.