

COMPARISON OF EU/UK POSITIONS ON CITIZENS' RIGHTS – 31/08/2017

The working group completed a mapping of the alignment between the two parties' positions, to prioritise future discussions.

This table summarises the UK and EU positions and compares them. Green indicates convergence, red indicates divergence and yellow indicates where further discussion is required to deepen understanding.

TOPIC	DETAIL	EU POSITION	UK POSITION	ISSUES
Personal scope	EU nationals lawfully resident before the cut off date	Date of UK's withdrawal	Between the date of A50 trigger and date of exit	UK to clarify
		EU citizens resident in accordance with Art 6, 7, 12, 13, 14, 16 and/or 17 of Directive 2004/38	EU citizens resident in accordance with Art 6, 7, 12, 13, 14, 16 and/or 17 of Directive 2004/38	
		EU rules with usual margins of discretion	UK prepared to specify in the WA details of implementation such as lack of Comprehensive Sickness Insurance (CSI) or not testing 'genuine and effective' work	
	EU national posted workers	Not covered by the citizens' rights chapter of the WA (linked to cross-border services).	EU national posted workers at the cut off date within scope of WA	
	Frontier workers	Those who are working as a frontier worker at the specified date fall within the scope of the WA for as long	UK will offer reciprocal arrangements.	

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		as they retain the status of a frontier worker. Such workers retain the rights they currently enjoy to enter and to work in the host country. The rights they enjoy in their country of residence are similarly protected.		
		To use the definition of 'a frontier worker' (including self employed workers) as defined in case law concerning Articles 45 and 49 TFEU and Reg.492/2011.	UK to consider. UK seeks clarification on how UK citizens in the EU will be identified as covered by the WA as a matter of practice.	
	Current family members	<ul style="list-style-type: none"> ● Family members as defined in Article 2 of Directive 2004/38; and ● Other family members as defined under the combination of Article 3 of Directive 2004/38 and individual MS legislation (to the extent such facilitation has been provided for) who are resident in accordance with Art 2 and Art 3 on the date of UK's withdrawal 	<ul style="list-style-type: none"> ● Family members as defined in Article 2 of Directive 2004/38; and ● Other family members as defined under the combination of Article 3 of Directive 2004/38 and individual MS legislation (to the extent such facilitation has been provided for) who are resident in accordance with Art 2 and Art 3 on the date of UK's withdrawal 	

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		Residents above will fall within the scope of the WA as a <u>family member</u>	Residents above will fall within the scope of the WA as an <u>independent right holder</u>	To clarify
		Family members with a retained right of residence who are resident in accordance with Article 12 and 13 2004/38 on the date of the UK's withdrawal will fall within the scope of the WA.	Family members with a retained right of residence who are resident in accordance with Article 12 and 13 2004/38 on the date of the UK's withdrawal will fall within the scope of the WA.	
		Rights of EU child to pursue education (<i>Chen/Texiera</i>) protected for period of child's education	Rights of EU child to pursue education (<i>Chen/Texiera</i>) protected as independent right holder eligible for permanent residence	
	Future family members	This is an issue of preserving rights under EU law and not an issue of equal treatment. Family members as defined in Directive 2004/38 who accompany or join the EU citizen <u>after</u> the date of withdrawal may continue to benefit from rights of residence under same provisions as current family	Equal treatment as between EU and British citizens as regards applicable rules. Future family members will be subject to the same rules that apply to non-EU nationals joining British citizens, or alternatively to the post-exit immigration arrangements for the EU	

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		members.	citizens who arrive after the specified date.	
		Children born after UK's withdrawal would be able to join their parents <u>as a family member</u> (not a right holder)	Children born to an EU citizen parent with settled status in the UK after the date of withdrawal will be eligible to immediately acquire settled status or British citizenship if born in UK as an independent right holder	To clarify
Nature of the agreement	Source	International Treaty which creates obligations which are binding in international law on the Parties	International Treaty which creates obligations which are binding in international law on the Parties	
	Individual enforcement of rights	Directly effective provisions of agreement enforceable through the domestic courts of EU27 and UK (i.e. individuals can rely directly on WA provisions in front of domestic courts to override domestic implementing legislation)	Rights granted through UK law and enforceable through the domestic UK judicial system, but without the WA rights having a direct effect UK courts have regard to WA where implementing legislation is ambiguous	
	Role of CJEU			For discussion in Governance Group

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	Monitoring and oversight	European Commission to monitor compliance	Commission monitoring body for EU27. UK prepared to consider establishment of an independent monitoring arrangement in the UK	
	Use of EU law concepts	EU law concepts used in WA interpreted in line with CJEU case law as at the point of the UK's withdrawal	EU law concepts used in WA interpreted in line with CJEU case law as at the point of the UK's withdrawal	
	Future CJEU case law	Future CJEU case law to be taken into account	UK to consider	For discussion in Governance Group
Residence	Permanent residence	Conditions for acquiring PR as per Article 16 Directive 2004/38 (5 years residence as a worker/self employed person, student, self sufficient person, or family member thereof)	Minimum conditions for acquiring PR as per Article 16 Directive 2004/38 (5 years residence as a worker/self employed person, student, self sufficient person, or family member thereof)	
		EU rules with usual margins of discretion	UK prepared to specify in the WA details of implementation such as lack of CSI or not testing 'genuine and effective' work	
		Conditions for acquiring PR as per Article 17 Directive	Conditions for acquiring PR as per Article 17 Directive	

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		2004/38 (retired people, permanent incapacity)	2004/38 (retired people, permanent incapacity)	
Loss of permanent residence		Loss of permanent residence status after 2 years	Loss of permanent residence status after 2 years	
			UK prepared to offer further flexibilities in <u>respect of citizens with strong ties in the UK</u> (e.g. students abroad for studying, overseas posting). UK seeks similar outcome from the EU on this point.	UK seeks similar outcome from the EU on this point
Temporary residence		Temporary residence on the basis of <5 years but have fulfilled the conditions of Article 6 and 7 Directive 2004/38 – including right to change status (e.g. student to worker)	Temporary residence on the basis of <5 years but have fulfilled the conditions of Article 6 and 7 Directive 2004/38 - including right to change status (e.g. student to worker)	
Continuity of residence		Definition of continuity of residence as per Article 16 (3) (i.e. permitted absence of 6 months in any 12 or 12 months for an important reason e.g. childbirth)	Definition of continuity of residence as per Article 16 (3) (i.e. permitted absence of 6 months in any 12 or 12 months for an important reason e.g. childbirth)	
Criminality committed		Expulsion due to public	Expulsion for pre-exit activity	

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	pre exit	security, policy or health as per Directive 2004/38	on basis of public policy/security/health as per Directive 2004/38	
	Criminality committed post exit	Expulsion due to public security, policy or health as per Directive 2004/38	Expulsion for post-exit activity assessed under UK immigration rules	
	Administrative procedures - general	As per Directive 2004/38 current EU position is that documents are declaratory.	UK position is that rights are granted by Home Office, therefore documentation are constitutive in order to give certainty to EU citizens in the UK as to their status and enable them to prove that they have rights under the WA.	It will be necessary to identify beneficiaries of the WA through documentation
	Current holders of permanent residence certificate	Citizens shall be considered legally resident even if they do not hold a residence document evidencing that right.	Holders of Permanent Residence certificates need to reapply; UK ready to offer more streamlined administrative procedure. UK seeks clarification on how UK citizens in the EU will be identified as covered by the WA as a matter of practice.	
	Administrative procedures – criminality	EU position is that criminality checks cannot be conducted	UK position that systematic criminality checks on applicants necessary to	

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	checks	systematically	assess criminality/conduct criteria in application.	
	Administrative procedures – smooth and streamlined	As per EU 27 individual administrative procedures.	UK plans new caseworking system capable of handling volumes, suitable for handling the post-exit	Both sides to provide information on any changes in procedures and communications.
	ID requirements for documentation as a beneficiary of the WA	As per Directive 2004/38 – valid passport or ID card	UK position is to verify identity of applicant through passport (preferred) or ID card, as permitted by EU rules. Biometric information (photo) may be required	
	Fees for documentation	Free of charge or for a charge not exceeding that imposed on nationals for issuing of similar documents	Free of charge or for a charge not exceeding that imposed on nationals for issuing of similar documents	
	Associated Rights	Equal treatment within the limits of Article 24 with respect to social security, social assistance, health care, employment and self-employment, education and training, social and tax advantages	UK settled status means: Equal treatment with respect to social security, social assistance, health care, employment and self-employment, education and training, social and tax advantages	

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	Voting rights	EU position does not cover UK citizens' rights to vote and/or stand in local elections because this arises from EU citizenship rights	UK wants to protect existing rights of UK/EU citizens to vote and/or stand in local elections in their host state in the WA	
	Duration of rights	Life-long protection for the right holder as guaranteed by the Withdrawal Agreement	Life-long protection for the right holder as guaranteed by the Withdrawal Agreement	
	Further movement rights	UK nationals in scope of WA only have protected rights in the state(s) in which they have residence rights on exit day	UK nationals in scope who move within EU27 after the specified date should keep all existing rights; also for cross-border activity begun after the specified date	
Social security coordination	Personal scope	Personal scope of Regulation 883/2004 as covered in Article 2.	Personal scope of Regulation 883/2004 as covered in Article 2.	
	Past residence and work	EU and UK citizens having worked or resided in the EU27/UK in the past shall, for the purposes of aggregation of periods of social security insurance, in accordance with Regulation 883/2004 be covered by the WA.	EU and UK citizens having worked or resided in the EU27/UK in the past shall, for the purposes of aggregation of periods of social security insurance, in accordance with Regulation 883/2004 be covered by the WA.	
	Personal scope – third	As in Regulation 883/2004	Refugees and stateless	

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	country nationals	except third country nationals that are not family members	persons should be covered because they are included in Regulation 883. UK wants to ensure that past contributions by third country nationals continue to be recognised after the withdrawal date.	Commission to clarify scope.
	Past and future contributions – Aggregation under Regulation 883/2004	Contributions both before and after exit will be recognised for those covered by the WA.	Contributions both before and after exit will be recognised for those covered by the WA.	
	Past and future contributions – Aggregation under Regulation 883/2004 and Regulation 1231/2010	Contributions both before and after exit will be recognised for those covered by the WA.	Contributions both before and after exit will be recognised for those covered by the WA.	
	Equal treatment	Equal treatment under the conditions set out in EU law.	Equal treatment under the conditions set out in EU law.	
	Benefits	All those referred to in Regulation 883/2004	All those referred to in Regulation 883/2004	
	Benefits – export of pensions	Lifetime export of uprated pension.	Lifetime export of uprated pension.	
	Benefits – export of	Lifetime export under conditions in Regulation	Guarantee export if exporting that benefit on the specified	

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	other benefits	883/2004.	date, and guarantee parity with UK nationals if not.	
	Healthcare – material scope	The rules for healthcare will follow Regulations 883/2004 and 987/2009.	The rules for healthcare will follow Regulations 883/2004 and 987/2009. For instance, responsibility for funding healthcare lies with the competent authority for State Pensions.	
	Healthcare – personal scope	Persons whose competent state is the UK and are in the EU27 on exit day (and vice versa) – whether on a temporary stay or resident - continue to be eligible for healthcare reimbursement, including under the EHIC scheme, as long as that position continues.	Persons whose competent state is the UK and are in the EU27 on exit day (and vice versa) – whether on a temporary stay or resident - continue to be eligible for healthcare reimbursement, including under the EHIC scheme, as long as that position continues. This includes, for instance, EU27 citizens working in the UK on exit day (and vice versa for UK nationals in the EU27); EU27 pensioners living in the UK on exit day	

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			(and vice versa); and EU27 nationals studying in the UK on exit day (and vice versa).	
		No continuing healthcare entitlement under Reg.883/2004 if no cross border situation on exit day. Goes beyond personal scope.	The UK seeks a broad scope for EHIC based on the principle of an insured person under 883, without any need for a cross border situation on day of exit. Significant concerns about operability without this.	
	Coordination principles apart from export	All other coordination principles of Regulation 883/2004	All other coordination principles of Regulation 883/2004	
	Administrative cooperation	Cooperation between national authorities as set out in Regulation 883/2004 and 987/2009	Cooperation between national authorities as set out in Regulation 883/2004 and 987/2009	
Professional qualifications	Personal scope	The rights of EU27 persons resident in the UK before the withdrawal date and vice versa as well as frontier workers.	The rights of EU27 persons resident in the UK on the specified date and vice versa as well as frontier workers.	
			Right to have a professional qualification recognised should not be tied to residency.	

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	Qualifications	PQs obtained in EU28 before WD.	PQs obtained in EU28 before WD.	
			PQs includes periods of professional experience and attestations of competence; sector specific legislation in transports, audits, legal services and others; and licenses and certificates that operate in a similar way to PQs.*	
			PQs in the course of being acquired at WD.	
	Equal treatment	Full equal treatment with national professionals (Articles 45 and 49 TFEU) where professionals are resident in the UK before the Withdrawal Date and vice versa.	Full equal treatment with national professionals (Articles 45 and 49 TFEU) where professionals are resident in the UK on the specified date and vice versa.	
			Relevant equal treatment with national professionals for those who are neither frontier workers nor resident on the specified date.	
	Recognition decisions	To be grandfathered: > decisions on recognition of	To be grandfathered: > decisions on recognition of	

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		EU 28 qualifications granted before WD either in the UK or in any other EU 27	EU 28 qualifications granted before WD either in the UK or in EU 27	
		> decisions on recognition of 3rd country qualifications which have been assimilated to EU qualifications after 3 years of exercise in the EU28 which first recognised them	> decisions on recognition of 3rd country qualifications which have been assimilated to EU qualifications after 3 years of exercise in the EU28 which first recognised them	
		> on-going recognition procedures to be completed under the rules applicable before WD (both EU and third-country recognitions) including those undertaking compensatory measures to obtain recognition.	> on-going recognition procedures to be completed under the rules applicable on the specified date (both EU and third-country recognitions) including those undertaking compensatory measures to obtain recognition.	
		EU to clarify on the basis of the list provided by the UK.	Continued recognition of professional qualifications which are recognised throughout the EU without a recognition decision under relevant EU law*.	
		To the extent that there is no recognition decisions before Withdrawal Date, this issue is	PQs that have been obtained, or are in the course of being obtained, but the citizen	

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		outside the scope.	hasn't been through or begun the process of having their qualification recognised, have the right to have the qualification recognised after Withdrawal Date.	
	Territorial scope	The effects of grandfathered recognition decisions limited to the issuing State – no subsequent single market rights (second establishment –cross-border provision of services) under EU law, and no grandfathering of recognition decisions in States other than the State where the UK national is residing or working as a frontier worker.	The right to have a qualification recognised and right to practise a profession should apply across UK and all EU 27 states.	
Other economic rights	Personal scope	The rights of EU27 residents in the UK before the withdrawal date and vice versa.	The rights of EU27 residents in the UK on the specified date and vice versa.	
	Rights	Individuals shall maintain all their rights, including equal treatment, under Articles 21, 45 and 49 TFEU, and under	Protect the rights of individuals under relevant provisions of EU law, including the rights under	

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		Directive 2004/38, Regulation 492/2011 as in associated rights.	Article 49 TFEU in the State of residence or frontier work (e.g. the right to set up and manage an undertaking, the right to equal treatment in the participation in the capital of EU companies or firms)	
	Territorial scope	Agreement to be confined to UK citizens residing or frontier working in a EU27 Member State and vice versa at the time of withdrawal.	Economic rights for UK nationals resident or frontier working in the EU27 extend across all EU27 Member States.	

- * Directive 2005/36/EC (MRPQ - most professions)
 Directives 77/249/EEC and 98/5/EC (lawyers - services and establishment)
 Directive 86/653/EEC (self-employed commercial agents)
 Directive 74/557/EEC (self-employed persons and intermediaries engaging in the trade and distribution of toxic products)
 Directive 2006/43/EC (statutory auditors)
 Directive 2003/59/EC (drivers of certain road vehicles for the carriage of goods or passengers)
 Regulation 1071/2009 (road transport operators)
 Regulation 216/2008 (commercial pilots and air traffic control officers)
 Regulation 1321/2014 (maintenance engineers, aviation)
 Directive 2007/59/EC (train drivers)
 Directive 2008/106/EC (seafarers)
 Regulation 1099/2009 (slaughtermen)
 Regulation 1/2005 (those transporting animals)
 Regulation 517/2014 (those handling fluorinated gases)