



HM Government

Explainer for part two (citizens' rights) of the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union

16 October 2020

Summary

1. The UK left the EU on 31 January 2020. The Withdrawal Agreement set the terms of the UK's departure, providing a smooth exit and orderly transition to the future relationship for people, businesses and organisations across our country. A transition period is now in effect and will end on 31 December 2020.
2. The Government has been clear that its priority is to provide certainty for EU citizens living in the UK, and UK nationals living in the EU. Part Two of the Withdrawal Agreement gives people certainty that their citizens' rights will be protected. People within scope of Part Two of the Withdrawal Agreement will have broadly the same entitlements to work, study and access public services and benefits as now, in as far as these entitlements have derived from UK membership of the EU.
3. The Withdrawal Agreement is without prejudice to Common Travel Area arrangements between the UK and Ireland and the rights of British and Irish citizens in each other's state. Irish citizens in the UK will not need to apply for settled status to protect their entitlements and UK nationals in Ireland will not need to register their residence.¹
4. This document is intended as a guide to support understanding of Part Two of the Withdrawal Agreement, which entered into force on 31 January 2020.

Implementing Part Two of the Withdrawal Agreement

5. The Withdrawal Agreement required domestic legislation in order to be implemented in the UK. On 23 January 2020, Parliament passed the EU (Withdrawal Agreement) Act 2020, which gave effect to the Withdrawal Agreement in UK law. This Act is the primary vehicle for the implementation of Part Two of the Withdrawal Agreement in the UK. Further [information on the legislation](#) can be found on gov.uk.
6. In the EU, the Withdrawal Agreement, as an international Treaty negotiated on behalf of the Member States, is legally binding on the Member States and the EU institutions. Individuals can rely directly on their rights under the Withdrawal Agreement in the same way as existing EU law.

Eligibility and scope of Citizens' Rights

¹ A Memorandum of Understanding was signed by the UK and Ireland in May 2019, reaffirming our ongoing commitment to the protection of the Common Travel Area and associated reciprocal rights and privileges.

7. Part Two of the Withdrawal Agreement provides that all UK nationals lawfully residing in a Member State at the end of the [transition period](#) will be able to stay in that host state,² as will all EU citizens lawfully residing in the UK. Their family members resident in the host state by 31 December 2020 will also be covered by the rights set out in the Withdrawal Agreement.
8. The conditions for lawful residence in the Withdrawal Agreement mirror those of current EU law on free movement, including the free movement criteria.³ Generally, individuals meet these conditions if they are in one of the following categories by the end of the transition period:
 - a. are workers or self-employed;
 - b. have sufficient resources and comprehensive sickness insurance, for example, a retired person or a student;
 - c. are close family members of another person who meets these conditions; or
 - d. have already acquired the right of permanent residence.
9. Individuals in scope of the Withdrawal Agreement can be joined by close family members (spouses, civil and unmarried partners, dependent children and grandchildren, and dependent parents and grandparents) who live in a different country at any point in the future, if the relationship existed on 31 December 2020 and still exists when the person wishes to join an EU citizen in the UK or a UK national in the EU. Such family members will then be protected by the Withdrawal Agreement.
10. Any child born to an individual in scope is also protected by the Withdrawal Agreement if the individual has custody of the child.
11. Generally, dual nationals of the UK and the EU, whether by birth or naturalisation, are covered by the Withdrawal Agreement if they have exercised free movement rights by the end of the transition period. Dual nationals who acquire nationality of their host state after the end of the transition period are also covered, if they exercised free movement rights by the end of that period. Dual nationals who have never exercised their free

² The 'host state' is the country in which an individual has taken up lawful residence. For example, if a UK national moved to live in Romania by the end of the transition period their host state would be Romania. EU citizens' 'host state' would be the UK.

³ As a matter of UK domestic policy, EU citizens are not required to establish their lawful residence in order to qualify for status under the EU Settlement Scheme.

movement rights are not covered by the full scope of the Withdrawal Agreement.

12. The Withdrawal Agreement also protects those citizens who reside in one state and regularly work in another. These are known as frontier workers.

Rights related to residence

13. UK nationals who have been living in a Member State continuously and lawfully⁴ for five years at the end of the transition period will have the right to reside permanently in that Member State. Equally, EU citizens who have been living in the UK continuously and lawfully for five years at the end of the transition period will have the right to reside permanently in the UK. To be considered continuously resident, individuals will generally have been lawfully residing in their host state for at least six months in any 12-month period.
14. Those who have not yet resided continuously and lawfully for five years in their host state by the end of the transition period will also be able to stay until they have reached the five year threshold, at which point they will qualify for the right to reside permanently. Until this five year threshold has been met, continuity of residence in the host state will be broken by a period or periods of more than six months in total in any 12-month period. One absence lasting a maximum of 12 consecutive months for an important reason, such as pregnancy and childbirth, serious illness, study, vocational training or a posting abroad is permitted. The Withdrawal Agreement enables the host state to restrict these rights if the individual is a serious or persistent criminal, or if they seek to abuse or defraud the system.
15. The UK and Member States can choose whether to require EU citizens, UK nationals and their family members to apply for a new residence status or not. In the UK, EU citizens and their family members need to apply for a residence status through the EU Settlement Scheme. Further information on [the EU Settlement Scheme](#) can be found on gov.uk. 13 Member States have chosen to operate a constitutive residence system for UK nationals, as the UK has done through the EU Settlement Scheme, the remaining 14 Member States have selected a declaratory residence system.⁵

- a. In a declaratory residence system, a residence status is given directly to those in scope of the Withdrawal Agreement by operation of the law and is not dependent upon completing administrative procedures. A

⁴ See paragraph 8

⁵ Data correct as of September 2020

decision by the host state is not required to have status under the Withdrawal Agreement. However, those eligible for status have the right to receive a residence document confirming this and there may be an obligation under national law to register for a residence document, which evidences the status.⁶

- b. In a constitutive residence system, those in scope of the Withdrawal Agreement only gain a residence status if they submit an application for a new residence status and the application is granted. A decision by the host state is required in order to have status under the Withdrawal Agreement. Failure to apply by the deadline for applications will mean individuals' residence rights are not protected by the Withdrawal Agreement.

16. The deadline for applications under constitutive residence systems, including the EU Settlement Scheme in the UK and in those Member States that have opted for one will be no earlier than 30 June 2021. Some Member States have chosen to open their residence systems early and others have announced an extended deadline. Further information [for UK nationals and their family members living in Europe](#) can be found on gov.uk.

17. Any application process adopted by Member States for UK nationals must be short, simple and user-friendly as the UK has done for EU citizens via the EU Settlement Scheme. The residence status must be issued free of charge, or for a charge not exceeding that imposed on citizens or nationals for the issuing of similar documents, for example a national identity card or passport.

18. Once gained, the right to reside permanently in the host state can only be lost through an absence from the country of more than five years unless it is restricted due to a person's conduct. EU citizens who have already acquired the right of permanent residence in the UK are required to apply for a new residence status under the EU Settlement Scheme. UK nationals living in Member States who have opted for constitutive systems will also be required to exchange their permanent residence document, by applying for a new residence status. They will have until at least 30 June 2021 to do so and the process will be free of charge. Further information [for UK nationals and their family members living in Europe](#) can be found on gov.uk.

⁶ Most Member States already operate mandatory registration procedures under existing free movement rules. UK nationals in the EU should check they are correctly registered and could be subject to fines if they fail to register after the first three months of arrival. Job-seekers do not need to register as a resident for the first six-months, but some Member States may require arrival reporting.

Entry and exit

19. EU citizens and UK nationals, and their respective family members, will continue to have the right to enter and leave their host state with a valid passport or national identity card for five years after the end of the transition period. After this point, national identity cards that do not include a chip that complies with International Civil Aviation Organisation standards related to biometric identification may no longer be accepted. EU citizens and UK nationals must not be subject to a visa requirement but may be required to provide evidence of their status under the Withdrawal Agreement when seeking entry to their host state.
20. Third-country national family members will require a valid passport, together with evidence they meet any visa requirement.

Rights of workers and the self-employed

21. Workers and self-employed persons who are covered under the Withdrawal Agreement will be guaranteed broadly the same rights as they currently enjoy. They have a right to not be discriminated against due to nationality, and the right to equal treatment with host state nationals. For example, equal treatment in respect of the right to work, the right to employment assistance such as unemployment benefits, conditions of employment, the right to tax and social advantages, collective rights, access to housing and the right for their children to receive an education.

Equal treatment and non-discrimination

22. The Withdrawal Agreement protects the existing rights to equal treatment and non-discrimination for EU citizens residing or working in the UK, UK nationals residing or working in the EU, and their family members. They will have broadly the same entitlements to work, study and access public services and benefits as now where these entitlements have derived from UK membership of the EU. These entitlements for EU citizens will be subject to any future domestic policy changes which apply to UK nationals and vice versa for UK nationals in the EU.⁷

⁷ If changes are made for UK nationals, those changes will also apply to EU citizens who have been granted settled status, except where this would put the UK in breach of its social security coordination obligations under the Withdrawal Agreement.

Frontier workers

23. Frontier workers are those citizens who reside in one state and regularly work in another. These workers can continue working in the state where they work if they did so by the end of the transition period. They may be required to apply for a document certifying their status and have a right to be issued with such a document if they request one.
24. If a frontier worker stops working before the end of the transition period, they can retain their status as workers in the state where they work, if they fulfil any of the following circumstances:
- a. They are temporarily unable to work as the result of an illness or accident.
 - b. They are in recorded involuntary unemployment after having been employed for more than one year.
 - c. They are in recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first 12. In this case, the status of worker is retained for no more than six months.
 - d. They embark on vocational training. For those voluntarily unemployed, the training must be related to the previous employment.

Mutual recognition of professional qualifications

25. The Withdrawal Agreement ensures that EU professionals resident or frontier working in the UK and UK professionals resident or frontier working in the EU, will continue to have their professional qualifications recognised, where they obtained or applied for a recognition decision before the end of the transition period.
26. This will cover the European Professional Card, qualifications recognised under the Professional Qualifications directive for the purpose of establishment (but not for the temporary and occasional provision of services), lawyers practising under host state title, approved statutory auditors, and persons engaged in the trade and distribution of toxic products.

Coordination of social security systems

27. For individuals in scope of the Withdrawal Agreement, the EU regulations on social security coordination will continue to apply across the whole of the UK and the EU from the end of the transition period. This will ensure that individuals in a “cross-border situation” involving the UK and the EU (e.g. people who have moved between the UK and the EU) before the end of the transition period will continue to be able to access pensions, benefits and other forms of social security, including healthcare cover, on the same terms as before the end of the transition period.
28. Individuals in full scope of the Withdrawal Agreement for social security coordination purposes will continue to be subject to the EU social security coordination rules. These rules:
- a. Ensure that workers (and their employers), as well as the self-employed, only pay into one social security system at a time.
 - b. Provide for the right to aggregate periods of insurance, employment, self-employment or residence completed, for the purposes of meeting different states’ benefit entitlement conditions. This includes relevant contributions made both in the UK and the EU before and after the transition period. The rules will also protect the rights that flow from such contributions such as benefit, pension and reciprocal healthcare rights.
 - c. Provide individuals with the same access to relevant benefits and healthcare as they would have under the current EU rules.
 - d. Provide for the payment of relevant benefits by either the UK or EU to a person who is residing in another state, as under the current EU rules.
 - e. Provide for the uprating of the UK State Pension paid to pensioners in Member States and, in accordance with EU rules, provide associated healthcare cover in the EU. This applies to people who are not yet at State Pension age at the end of the transition period, once they start drawing their UK State Pension.
 - f. Ensure that where the UK or a Member State is responsible for the healthcare of an individual, they will be entitled to reciprocal healthcare cover. This includes people who live in one state but are insured in

another (S1 scheme); planned health treatment (S2 scheme); and necessary healthcare cover during a temporary stay (the European Health Insurance Card scheme, known as EHIC).

29. Individuals in full scope of the Withdrawal Agreement for social security coordination purposes are those who are in a “cross-border situation” by the end of the transition period and continue to be in a “cross-border situation”. For example:

- a. EU citizens subject to the legislation⁸ of the UK at the end of the transition period. For example, an EU citizen working in the UK at the end of the transition period.⁹
- b. UK nationals subject to the legislation of a Member State at the end of the transition period. For example, a UK state pensioner who has retired to a Member State, a UK national living and working in a Member State or a UK national living in the UK but working in a Member State.
- c. EU citizens living in the UK but subject to the legislation of a Member State at the end of the transition period. For example, an EU citizen living in the UK but working in a Member State.
- d. UK nationals living in a Member State but subject to the legislation of the UK at the end of the transition period. For example, a UK national living in a Member State but working in the UK.
- e. EU citizens who are employed or self-employed in the UK at the end of the transition period, but subject to the legislation of a Member State; and UK nationals who are employed or self-employed in one or more Member States at the end of the transition period but subject to the legislation of the UK. For example, an EU citizen living in France, working for a French employer in both France and the UK, who carries out the substantial part of their work in France.
- f. Stateless persons and refugees, as well as third country nationals, lawfully residing in the UK or a Member State as long as they are in one of the situations above.

⁸ See paragraph 30

⁹ The EU citizen and their employer would continue to pay UK National Insurance contributions if they were liable to these previously (irrespective of whether they live in the UK or a Member State).

30. The EU social security coordination regulations ensure that an individual is only “subject to the legislation of” one Member State at a time. Typically, an individual is “subject to the legislation of” the state in which they work and reside. If these are different, it is typically the state in which they work (if they pursue an economic activity) or reside (where they do not pursue an economic activity).
31. The family members and survivors of individuals in scope of the Withdrawal Agreement for social security coordination purposes may have social security coordination rights derived¹⁰ from the primary right holder, as they had before the end of the transition period. The EU social security coordination rules will not apply to them in full,¹¹ but they will be able to derive cover in their capacity as a family member, on the same terms as before the end of the transition period. The definition of family members for this section typically includes:
- Spouses or civil partners
 - Children under 18
 - Children over 18 who are dependent.¹²
32. Individuals in full scope will retain full social security coordination rights for as long as they remain, without interruption, in one of the situations set out above. This means that, for example, a UK national living in a Member State at the end of the transition period who then moves to a different Member State after the end of the transition period and remains in one of the above situations, will retain their full social security coordination rights.
33. Individuals who have residence rights or the right to work in the UK or a Member State under the residency provisions of the Withdrawal Agreement¹³ will also be in scope for social security coordination purposes and, therefore, have full social security coordination rights whilst they retain residence rights or the right to work in the relevant Member State.
34. The Withdrawal Agreement also provides protections in a number of other circumstances to ensure there is no ‘cliff edge’ or loss of rights for individuals who are not, or are no longer in full scope for social security coordination purposes.

¹⁰ Entitlements of family members and other dependents derived from the rights of primary right holders under the Withdrawal Agreement. A person who does not qualify for a right of residence under the Free Movement Directive 2004/38/EC may qualify for another right of residence under EU law. These are known as ‘derivative rights’ as they come from (are ‘derived’ from) other instruments of EU law, and not from the Free Movement Directive.

¹¹ This relates to family members covered under Article 30.1. Family members of individuals in scope of Article 10.1 have full social security coordination rights as do their family members.

¹² Those who are classed as family members for the purpose of the EU Social Security Coordination rules can differ where a member state has a different definition in their domestic legislation.

¹³ See paragraph 13.

- a. A UK national, who is not living in the EU at the end of the transition period but has paid social security contributions in a Member State in the past, or an EU citizen, who is not living in the UK at the end of the transition period but has paid social security contributions in the UK in the past, will have those contributions protected by the Withdrawal Agreement. The rights that flow from those contributions such as benefit, pension and reciprocal healthcare rights will also be protected. Periods completed before and after the end of the transition period will be taken into account. This means that a person will be able to aggregate their past social security contributions with contributions they make after the end of the transition period for the purpose of meeting the minimum qualifying period for a state pension or relevant benefit.¹⁴
- b. Where a UK State Pension is paid to an individual in the situation above (a UK national with contributions in a Member State before the end of the transition period, or an EU citizen with contributions in the UK before the end of the transition period) this will be paid at the same rate as in the UK (uprated).
- c. People visiting the UK or the EU for planned medical treatment (the 'S2 Route'), where authorisation was requested before the end of the transition period, will be able to commence or complete their treatment. This guarantees that patients will be able to complete a course of treatment and provides the certainty that patients need during a vulnerable time in their lives.
- d. Individuals who are in a cross-border situation (for example a UK national who is in a Member State for a holiday or for the duration of a course of study, or vice versa for an EU citizen in the UK) at the end of the transition period, and who are entitled to an European Health Insurance Card (EHIC), will continue to benefit from that scheme for as long as that cross-border stay in the state they are in continues. A longer-term stay (e.g. for the purpose of studies) is not regarded as ending when the person concerned stays for a short period in another state, although their EHIC rights only apply to the state the person concerned is staying in at the end of the transition period.

¹⁴ Accessing reciprocal healthcare rights based on past security contributions is determined by the country of residence and the rules around the competent Member State for your pension and your healthcare.

- e. Where an EU citizen is living in a Member State but has dependant family members living in the UK at the end of the transition period, or a UK national is living in the UK but has dependant family members living in a Member State at the end of the transition period, the Withdrawal Agreement protects any family benefit awards to which these individuals are entitled at the end of the transition period. This provision also applies to stateless persons and refugees, as well as third-country nationals, living in the UK but with dependant family members living in a Member State at the end of the transition period (and vice versa).
- f. Dependant family members also have derived rights stemming from the rights of the primary right holder, such as a derived right to healthcare cover from the state where the primary right holder is insured.
- g. A posted worker who maintained residence in the UK while working in an EU member state, and began their posting by the end of the transition period would be considered in scope of the social security provisions of the Withdrawal Agreement while they continued their posting. They would be identifiable by their A1 form issued by the UK.¹⁵

Protections for rights and monitoring authority

- 35. The Withdrawal Agreement will be faithfully implemented in both the UK and the EU, providing additional assurance for EU citizens living in the UK and UK nationals living in Member States.
- 36. In the UK, Part Two of the Withdrawal Agreement has been fully incorporated into UK law by the EU (Withdrawal Agreement) Act 2020. UK courts, when interpreting terms and concepts of EU law in Part Two of the Withdrawal Agreement, will pay due regard to future Court of Justice of the European Union (CJEU) case law. Having had due regard to whether relevant case law exists, UK courts can choose to ask the CJEU for a ruling on a question of EU law. The CJEU's ruling on that question will have the same legal effect as in Member States, but it will be up to UK courts to make the final judgment in the individual case before it. This reference procedure is time-limited: UK courts will be able to refer questions that relate to residence status to the CJEU for

¹⁵ The Withdrawal Agreement does not protect the rights of a posted worker to continue their posting in the host country after the end of the transition period. It will be for the individual EU member state to determine if the worker can continue their posting after the end of the transition period. If the posted worker can continue with their posting, then their social security coordination position will not change for the duration of their posting.

eight years from 29 March 2019, because the EU Settlement Scheme has been open fully since this point. They will be able to refer questions that relate to other aspects of Part Two of the Withdrawal Agreement for eight years from the end of the transition period, as those other aspects will only apply from the end of the transition period.

37. To oversee the implementation and application of Part Two of the Withdrawal Agreement in the UK, an Independent Monitoring Authority is being established. This authority will be fully capable of monitoring the domestic implementation and application of Part Two of the Withdrawal Agreement. It will be able to receive complaints and conduct inquiries concerning alleged breaches of the Withdrawal Agreement by UK or Gibraltar public authorities.
38. The Independent Monitoring Authority will also be able to bring legal action in the UK and Gibraltar, with a view to seeking an adequate remedy if it deems that Part Two of the Withdrawal Agreement is not being implemented or applied correctly. In fulfilling all of these functions, the authority must have regard to the importance of addressing general or systemic failings in the implementation or application of Part Two in the UK and Gibraltar.
39. In the EU, the European Commission will perform the equivalent role of monitoring compliance in Member States and [will receive complaints via its assistance service](#). This arrangement will ensure the faithful implementation of citizens' rights, as set out in Part Two of the Withdrawal Agreement, in both the UK and the EU.
40. Following the transition period, both the Independent Monitoring Authority and the European Commission will produce an annual report on measures taken to implement or comply with Part Two of the Withdrawal Agreement, including the number and nature of complaints received by these authorities from EU citizens in the UK and UK nationals in the EU respectively. The Withdrawal Agreement has also established a Specialised Committee on Citizens' Rights, which will consider the reports and advise the Withdrawal Agreement Joint Committee, which governs the Withdrawal Agreement as a whole.

Key Terms

Aggregation - The EU social security coordination regulations set out how periods of insurance, employment, self-employment and residence in the UK and different EU member states can be added together and taken into account when determining benefit and state pension entitlement.

Derived rights - entitlements of family members and other dependents derived from the rights of primary right holders under the Withdrawal Agreement
A person who does not qualify for a right of residence under the Free Movement Directive 2004/38/EC may qualify for another right of residence under EU law. These are known as 'derivative rights' as they come from (are 'derived' from) other instruments of EU law, and not from the Free Movement Directive.

EFTA nationals - nationals of Iceland, Liechtenstein, Norway and Switzerland

EHIC - European Health Insurance Card. Gives an individual the right to access medically necessary state-provided healthcare during a temporary stay in another Member State. Covers medically necessary state-provided healthcare at a reduced cost or, in many cases, free of charge, until the planned return date.

EU Member States - Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

Frontier worker - A person who is resident in one state but regularly works in one or more states as an employed or self-employed person.

Host state - for EU citizens, the United Kingdom. For UK nationals, the EU Member State in which they exercised their free movement rights before the end of the transition period, and in which they continue to lawfully reside.

Lawfully resident - an EU citizen or a UK national lawfully resides in the host state in accordance with free movement law before the end of the transition period. This includes the right of residence, irrespective of whether it is a permanent right of residence, its duration (e.g. an arrival in the host state one week before the end of the transition period and residing there as a job-seeker is sufficient and irrespective

of the capacity in which these rights are exercised (as a worker, self-employed person, student, job-seekers, etc).

Posted Worker - an employee sent by their employer to carry out a service in another country on a temporary basis.

S1 - certificate of entitlement issued to individuals who live in one Member State but have their healthcare costs covered by another, for example state pensioners, and entitles them access to state-provided healthcare on the same basis as domestic nationals.

S2 - funding route for pre-authorised planned treatment in another Member State

Social security coordination/social security systems.

The provision of cross EU rules to protect individuals' social security rights when moving within Europe. The rules on social security coordination mean that a person

1. is covered by the legislation of one country at a time and that they only pay contributions in one country.
2. has the same rights as the nationals of the country where they are covered.
3. who has previous periods of insurance, work or residence in other countries has those taken into account, if necessary.
4. who is entitled to a cash benefit from one country, may generally receive it even if they are living in a different country.

Subject to the legislation of - The EU social security coordination regulations ensure that an individual is only "subject to the legislation of" one Member State at a time. Typically, an individual is "subject to the legislation of" the state in which they work and reside. If these are different, it is typically the state in which they work (if they pursue an economic activity) or reside (where they do not pursue an economic activity).

Third country national - a national of a country that is neither the UK nor an EU Member State/EFTA state.

Transition period - Time-limited period which began when the UK left the EU on 31 January 2020 and ends on 31 December 2020. During this period, EU law will continue to apply in the UK subject to the terms set out in the Withdrawal Agreement.

Withdrawal Agreement - The international agreement between the UK and the EU that sets out the respective rights and obligations of both parties following the UK's withdrawal from the EU

Additional information

- Living in Guides
- Living in Europe Guide
- Transition Period Landing Page
- Withdrawal Agreement Legal Text
- Departmental pages
- Joint Guidance
- EU (Withdrawal Agreement) Act 2020
- Healthcare in the EU
- NHS Going Abroad for Treatment