

LexCase – Immigration Department

Following the ratification of the Withdrawal Agreement, the United Kingdom's exit from the European Union has been effective since 1 February 2020.

What is the transition period provided by the Withdrawal Agreement?

The Withdrawal Agreement provides for a transition period from 1 February 2020 to 31 December 2020.

During this transition period, British nationals and their family members already settled in France or wishing to settle there before 1 January 2021 will retain their acquired rights as EU citizens and will not be required to hold a residence permit.

Also, until the end of the transition period, entry conditions remain the same as before Brexit: British travellers wishing to enter France must carry a valid passport or national ID card and no visa is required.

NB: This transition period may be extended for a maximum of one or two years.

Brexit: clarification of citizens' rights

In a guidance note, the Commission details several points in the second part of the UK opt-out agreement concerning citizens' rights.

NB: The Commission stresses that this guidance note is "*purely informative and does not constitute a supplement to the agreement on the United Kingdom's withdrawal from the Union ... the views expressed therein should not be construed as an official position of the Commission*".

Personal scope of application

The main objective of the withdrawal agreement is to provide "*effective, enforceable and non-discriminatory safeguards*" to protect the rights of EU and UK citizens, i.e. "*EU citizens and UK nationals who have exercised a right to reside or work in accordance with Union law before the end of the transitional period and who continue to do so after that period, and their respective family members*".

The Commission details the status of many persons such as "close" family members, future children, "extended" family members, third-country nationals caring for a dependent EU citizen, etc. The Commission also provides details on the status of many other persons.

The concept of "citizen of the Union" and dual nationality

The EU executive specifies that a national with dual EU/EU or EU/non-EU nationality who is resident in the UK at the end of the transition period will be covered by the withdrawal agreement as an "EU citizen".

In the case of dual EU/UK nationality by birth or naturalization, nationals will only be covered if, at the end of the transition period, they have exercised their right of residence under the rules on free movement.

Finally, those who have never exercised their rights of free movement will not be covered by the Agreement.

Continuity of stay

According to the Withdrawal Agreement, persons temporarily absent from the territory of the host State at the end of the transition period will still be considered as lawfully residing in that territory under the condition of "continuity" and therefore protected by the agreement. This means that a person can only lose the right of permanent residence if he/she is absent for more than five years.

Persons who do not yet have this right, *i.e.* who have not yet resided in the host State for more than five years, may only be absent for a maximum of six months a year. Furthermore, *"a person who has been absent for more than five years in the past, but who returns to the host State before the end of the transition period, shall begin to accumulate*

periods of legal residence from zero on his or her return to the host State before the end of the transition period".

A period of imprisonment before acquiring the right of permanent residence resets the counter to zero and a new period of five years of continuous residence must be accumulated.

Issuing residence permits

The Commission would point out that the Withdrawal Agreement gives the host State the choice between setting up a constitutive residence scheme or a declaratory residence scheme.

In the first case, the "source" of residence status and the rights deriving from it is the fact of fulfilling the conditions that Union law attaches to the right of residence (no decision by the national authorities is required to have the status, although there may be an obligation to apply for a residence permit attesting to the status). Whereas in the second case, the "source" of the residence status and the rights deriving from it is the decision of the national authorities granting the status.

Pending a reply to an application for a residence permit, the authorities of the host State may not take any restrictive measures: the applicant's status is protected until the authorities take a decision and the courts rule on any appeal lodged. In the case of out-of-time applications, states must agree to process applications for which there are "reasonable grounds" for not meeting the initial deadline.

Workers' rights

The Commission underlines that *"the Agreement does not cover employment in the public administration within the meaning of Article 45(4) TFEU. Consequently, the host State or the State of employment may reserve to its own nationals access to employment involving participation in the exercise of public authority and the safeguarding of the general interests of the State"*.

Observing that the Withdrawal Agreement does not provide a definition of the concept of "employed person", the Commission relies on the case law of the ECJ and states that *"the essential characteristics of an employment relationship are as follows: for a certain period of time, a person performs services ... for and under the direction of another person ... in return for which he or she receives remuneration"*.

In the context of the right to engage in self-employment, the opt-out Agreement should not be interpreted as giving UK nationals the possibility to avail themselves of Union law to provide services or establish themselves in other EU Member States.

Other details

It is for each State to decide whether it will adopt domestic laws, regulations or administrative provisions that are more favourable to the beneficiaries of the Withdrawal Agreement than those provided for therein.

The Commission adds that the rights provided for in the Agreement do not have an "expiry date".

The note is available here:

[https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=CELEX:52020XC0520\(05\)](https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=CELEX:52020XC0520(05))

Réf.: Communication from the Commission Guidance note on the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community Part II - Citizens' rights 2020/C 173/01C/2020/2939



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