

THE WITHDRAWAL AGREEMENT

What is it, what does it do and who does it cover?

This is the first article (of a total of 6 articles) in British in Europe's January 2020 information campaign about the Withdrawal Agreement and how it affects you as a British citizen living in an EU country.

In this article we take a look at what the Withdrawal Agreement is (and what it isn't), what it does, how it's different from the no deal legislation that your host country will have produced, and who it covers.

The following articles will look specifically at

- Residence rights and procedures;
- Health care, pensions and social security;
- Working rights, professional qualifications and family reunification;
- What's not covered by the WA;
- Frequently asked questions.

What is the Withdrawal Agreement?

The Withdrawal Agreement is an international agreement between the EU and the UK that sets out how the UK's EU membership will end. It covers the status and rights of both British citizens in the EU and EU nationals in the UK, the UK's financial obligations, how the Irish border will continue to function and a transition period. It doesn't cover trade or any other aspects of the future relationship between UK and EU - discussions on these are quite separate and won't begin until after the UK has left the EU.

The UK's Withdrawal Agreement Bill turns the Withdrawal Agreement into UK law and gives the government permission to ratify it. The Bill and the Withdrawal Agreement however are different things - even if amendments are made to the Bill, the Withdrawal Agreement itself remains unaltered.

In the rest of this article (and the ones that follow) we refer to the Withdrawal Agreement as the WA and to your country of residence as your host country.

When does it come into force?

Once approved by both UK and European parliaments, the WA will come into effect at midnight CET (23.00 UK time) on 31 January 2020.

At that point, the transition period (you'll sometimes hear this called an 'implementation period' in the UK) comes into effect. This lasts until 31 December 2020 and is a kind of standstill during which EU law, including freedom of movement rules, still apply to the UK and its citizens, and during which the 'future relationship' between the UK and EU must be negotiated, including a trade deal.

During the transition period our citizens' rights remain unchanged (except for voting and political rights, which we lose immediately on exit - see below for more).

Can the transition period be extended?

The WA allows for an extension to the transition period of one or two years, providing this is requested by July 2020 (Article 132). However, a new clause has been added to the Withdrawal Agreement Bill preventing any such extension from happening.

But Article 132 will remain in the WA even if the Withdrawal Agreement Bill passes with this proposed amendment - so the door remains open for the UK government to change its mind on extending the transition period at any point up to July 2020, just by passing a new piece of primary legislation.

What if there's 'no deal' at the end of transition?

You've almost certainly read about the possibility of 'no deal' if the government fails to negotiate a future relationship/trade deal by 31 December 2020 and there's no extension to the transition agreement. The media is now using the term 'deal' to relate to the future relationship deal that has to be agreed during the transition period, and the terms 'no deal' and 'crashing out' to the situation where no such deal can be agreed. Confusingly, these are the very same terms that they used to denote the UK leaving without a WA, but the meaning is very different. These are two different deals: one is the divorce agreement (the WA) while the other will cover the future relationship between the UK and the EU.

If no agreement on the future relationship is reached, the UK would automatically default to trading on WTO terms with the EU. However - and this is important - once the WA or initial divorce agreement has been ratified by both sides, *it will remain in place as an international agreement and the rights that it includes for us would be guaranteed. They cannot be removed even if the EU and the UK do not reach an agreement on the future relationship. Once the Withdrawal Agreement is ratified, we will be covered by it for our lifetimes whatever happens with future negotiations.*

So a failure to conclude a trade deal might be a 'no deal' situation for the UK, but not for us. We can't say this enough, as it's important and the subject of much confusion and concern.

How is the Withdrawal Agreement different from the no deal contingency plans that my host country has produced?

The no deal contingency plans and legislation produced by each EU27 state relate only to a situation in which the UK leaves the EU without a WA. They would come into effect at the moment of a no deal exit, which is now unlikely to happen.

Under a no deal scenario, we would have defaulted to basic third country national status immediately on exit and our future rights would have been determined by the national immigration law of our

host country. UK citizens would have been treated differently according to where they lived, as each country's no deal plans were different.

As the UK will now leave the EU under the WA, the no deal legislation produced by each country will not now come into effect and will become defunct on Brexit day, 31 January 2020.

All the citizens' rights provisions of the WA must be implemented in every EU27 country, which means that your country can't decide to treat you less favourably than another country would. Each country will have different procedures for obtaining a residence card, as they do now for EU citizens, but our rights themselves will remain uniform right across the EU.

Our rights enshrined in a treaty

The primary rights that currently allow us to live, work and study in our adopted countries and to travel freely derive from the EU Treaty and depend on the UK's EU membership. How they are to be applied in practice is set out in an EU wide Directive, 2004/38/EC. This Directive covers all EU states, which means that we all have the same rights wherever we live in the EU, although some procedures differ between countries. Your country of residence also has its own legislation which implements the Directive in national law.

When the UK leaves the EU we cease to be EU citizens and lose the EU citizenship rights we have under the Treaty that are put into practice by the Directive. But the WA works in a similar way - setting out core rights first, and then how they should be put into practice - so that we retain most of the rights we currently have (but only in our host countries) and are able to continue living in our host countries under the same conditions as we do now, with some exceptions (see below).

Part 2 of the WA contains detailed provisions on citizens' rights which will apply to all British citizens living in the EU and to EU nationals living in the UK. Every EU state must adhere to the WA and implement the rights in it. This means that your host country can't downgrade your rights from those contained in the WA, now or in the future, or impose any extra conditions to obtain or retain your rights.

The WA is an international agreement and has what's known as 'direct effect'. This means that the rights it contains are directly binding in national law; you can rely on them directly before the courts even if the country where you are living doesn't apply the provisions of the WA correctly in national law. Any dispute is also subject to the jurisdiction of the European courts.

And a key point we want to emphasise is this: *the WA remains in effect, and your rights will continue to be covered by it for your lifetime, whatever happens with the trade/future relationship negotiations - even if there is 'no deal' at all at the end of the transition period.*

You can read the citizens' rights part of the WA here.

Lifetime protection

You will be covered by the WA for the whole of your lifetime as long as you remain resident in your host country. See below for the amount of time you're allowed to be outside your host country without losing your rights.

Two key dates

31 January 2020

The first key date is obviously exit day itself - midnight CET on 31 January 2020. This is the point at which we legally cease to be EU citizens. At this point we lose our voting and political rights and won't be able either to vote or stand as a candidate in future municipal or European elections. But we retain all our other current rights - including freedom of movement - until the end of the transition period.

31 December 2020

The second key date is the end of the transition/implementation period, which begins on exit day and lasts until 31 December 2020 - or longer if extended (see Part 1). This date - known as the 'effective date' - is crucial, as it's the date on which you must be 'legally resident' in your host country to have your ongoing rights covered under the WA.

This includes people who have moved after Brexit day but before the end of transition on 31 December 2020, who will be covered by the WA on the same terms as those resident before Brexit day itself.

Legal residence is more than just having a foot on the soil - you must meet certain conditions. See this page for an explanation of legal residence (the website is France-based but the information is valid across the EU). *Important: if you have never registered your residence in your host country, you may not be considered to be legally resident so it is important to do this before 31 December 2020* (this does not apply in France where registration isn't currently compulsory while we are EU citizens, although it will be after Brexit).

You do not need to be physically present in your host country on 31 December 2020 in order to be covered by the WA, as long as you meet the conditions for legal residence on that day.

Rights during the transition period

The transition period runs from 31 January 2020 to 31 December 2020 (longer if extended). During this period our rights effectively remain the same as they are now (except for political and voting rights) and although we actually lose our EU citizenship on Brexit day, we will be treated like EU citizens through this period.

We retain all our current rights to freedom of movement throughout the transition period. This means that during this period you can:

- *Move from the UK to the EU* and (as long as you are legally resident at the end of the transition period) your future rights will be covered by the WA; and
- *Move from one EU country to another.* If you do this during the transition period and meet the conditions for legal residence in your new host country, your future rights there will be covered by the WA (note that your period of residence will begin on the day you arrive in your new country - you would 'lose' the years accumulated in your former host country).
- *Get your UK professional qualifications recognised* under EU rules in your host country, so if you have any of these for which you haven't yet applied for recognition, you should do this now.

Who is covered by the WA?

You're covered by the WA if:

- You are *legally resident in your host country* at the end of the transition period (currently 31 December 2020), and you continue to live there after this date. 'Legally resident' means that you meet the conditions that currently apply to you as an EU citizen exercising your free movement rights.
- You are also covered if you *moved to your host country* to become legally resident after Brexit day, 31 January 2020, and before the end of the transition period, and you continue to live there after this date. As above, 'legally resident' means that you must meet the conditions that currently apply to you as an EU citizen.
- You are a *family member* of someone who meets either of the above conditions. You're classed as a family member if your relationship to that person is that of spouse, registered partner, direct descendant (child, grandchild etc) who is under 21 OR who is older than this but dependent, or direct ascending relative (parent, grandparent etc) who is dependent.
- You are a *family member* who had a derived right of residence in your host country before the end of transition following either the death or departure of an EU citizen or the divorce, annulment of marriage or termination of a registered partnership with an EU citizen in the past. This would cover both situations where the past relationship was with a British or other EU citizen or where you as a family member are a British or non-EU citizen.
- If you are a *family member who does not fall within the definition above* but are already resident, or have applied for residence before the end of transition. In the first case, you will keep your right of residence; in the second case, the WA says that your host country shall 'facilitate entry and residence' and this is subject to conditions.
- If you are in an unregistered partnership but are in a '*durable relationship*'; but are already resident your partner will keep their right of residence. If your partner applied for residence before the end of transition or was living outside the host state at the end of transition and applied later, the WA says that your host country shall 'facilitate entry and residence' for that partner in accordance with its national legislation, providing the relationship was already durable at the end of the transition period. This is more stringent than the conditions for other close family members.
- If you have *children* (including by legal adoption) AFTER the end of the transition period they also are covered by the WA if (a) you and the other parent are both covered by the WA; (b) one parent is covered by the WA and the other is a national of your host country; or (c) one parent is covered by the WA and has sole or joint custody rights of the child.

Your rights will be covered by the WA in the country where you are living at the end of the transition period - we refer to this as your 'host country'.

How will the Withdrawal Agreement be implemented?

- At the top level, the WA establishes a Joint Committee, which will be responsible for its implementation and application. The Joint Committee will be made up of representatives from both UK and EU, and its job is to 'supervise and facilitate the implementation and application' of the WA. Under this Joint Committee there will also be a specialised Committee on citizens' rights, which is

specifically provided for in the WA. This Committee will report to the overall Joint Committee.

- The European Commission will be issuing an implementation guidelines document to the UK and all member states, which will put some more flesh on the bones of the WA and will give guidance to countries in implementing it e.g. about issues like the rights of dual citizens under the WA and how the healthcare provisions will apply in practice.
- Each country will have to incorporate the provisions of the WA into its own national legislation during 2020, just as it will already have done with the EU citizens' Directive. Remember that rights under the WA will be binding under international law and we will be able to rely on them directly before the courts even if your host country doesn't apply the provisions of the WA correctly in national law, now or in the future.
- We know very little so far officially of how each country intends to implement the WA nationally, as they have all been focusing on their preparations and legislation for a no deal scenario. Keep your eye on your host country's Brexit website or page (if it has one) and also on your embassy's social media feeds for details. We are in contact with both the new Task Force on relations with the UK and with the UK and (most) EU 27 authorities on implementation issues and will also be providing information as and when it becomes publicly available.

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