

THE WITHDRAWAL AGREEMENT

6) Withdrawal Agreement FAQs

This is the final article (of a total of 6 articles) in British in Europe's 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 some of the most frequently asked questions about our rights under the Withdrawal Agreement. We'll update it in the weeks to come to add new questions as they arise.

The **first article** in the series covered 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. [You can read it here.](#)

The **second article** covered residence rights and procedures. [You can read it here.](#)

The **third article** covered health care, pensions and social security. [You can read it here.](#)

The **fourth article** covered working rights, professional qualifications and future family reunification. [You can read it here.](#)

The **fifth article** outlined what the Withdrawal Agreement doesn't cover. [You can read it here.](#)

Important note: this explanation is designed to help UK citizens in the EU by giving them a general overview of the Withdrawal Agreement and our understanding of its provisions. Anyone who wants advice on the Withdrawal Agreement on which they intend to rely should consult a practising lawyer. We are a campaigning group and not in a position to give legal advice. British in Europe is unable to accept liability for any loss or damage sustained directly or indirectly as a consequence of any statement or omission in this explanation.

General questions on the Withdrawal Agreement

1) What happens if there's no trade deal by 31 December 2020 and no extension to the transition period - does the WA become null and void?

No. The WA is an international agreement that sets out how the UK will leave the EU. Now that it has come into effect, it remains in effect even if there's no agreement on trade and the future relationship. The rights that it includes for us remain guaranteed and cannot be removed even in the absence of a trade/future relationship agreement at the end of the transition period.

So in a nutshell, now that the WA has been ratified, our rights under it are guaranteed for our lifetimes whatever happens with the future negotiations as long as we continue to fulfil the conditions under the WA. These conditions depend on the rights in question e.g. broadly the conditions and personal scope for residence and other rights are different to those for social security rights.

2) Why did we lose political rights on 31 January 2020 but keep everything else until the end of the transition period?

Your rights to vote and stand in local and European elections in your host country rely on your EU citizenship, which you lost as of 1 February 2020. While most of your current rights as an EU citizen are maintained by the WA during the transition period (including freedom of movement), this doesn't extend to voting and political rights, which are specifically excluded under Part Four of the WA, which covers the transition (Article 127(1)(b) if you want to look it up). Your host country could, if it chooses, unilaterally continue to let British citizens vote and stand in local elections, or enter into a bilateral agreement with the UK on political rights. But this does not come under the WA. And note that some EU countries anyway let third country nationals vote.

3) My host country has passed legislation that covers our rights in a no deal Brexit, and it also set up a scheme last year for people to apply in advance for a new card. What happens now - does all that still stand?

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. This is no longer going to happen, so the legislation has no legal effect. 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 along with any specific national contingency measures.

Anyone who has already applied for a new national status under their host country's no deal legislation may have to register or apply again to secure their status/rights under the WA. Your host country will be publishing details over the coming weeks and months.

Who's covered by the WA?

4) I live in the UK and I plan to move to an EU country in summer 2020. Will I be covered by the WA?

Yes, you'll be covered by the WA as you'll be moving before the end of the transition period, currently set for 31 December 2020. Until that time we keep our free movement rights, so you'll be able to move to any EU country in the same way as you can now. You'll need to make sure that you meet the conditions for legal residence though - see [this page](#) for some information about what that means.

5) What happens if I'm outside my host country at the end of the transition period - will the WA still apply to me?

To be covered by the WA, you don't need to be physically present in your host country at the end of the transition period, but you do need to be already legally resident at that point, and your overall period of absence must meet the rules applicable to your residence status. If you have less than 5 years residence in your host state, you can be absent for a maximum of 6 months per year (longer in some cases). If you have permanent residence status as an EU citizen (i.e. more than 5 years of legal residence) and your absence extends over the end of transition (currently set at 31 December 2020) you will benefit from the new rules in the WA which allow you to be away from your host state for 5 years. Remember though that if your host country requires you to **apply** for a new status and residence document, you will have to do this before 1 July 2021 and you will need to be able to show ongoing residence in order to switch your status to permanent residence under the WA.

6) What happens if I change from being employed to being self-employed after the end of transition, or if I retire? Would I still be covered by the WA?

Yes, you would. The WA specifically protects the rights of people (including family members) who change the basis of their residence, for instance who move between being employed and self-employed, or from working to being retired or from being a student to working (or any other permutation). As long as you meet the conditions in your new category (or you have qualified for permanent residence generally because you've lived in your host country for more than 5 years, in which case your residence has become condition-free) then you'll continue to be covered.

7) What happens when my daughter, who is 14 at the moment, leaves school and starts working? As she'll no longer be dependent on me, will she still be covered by the WA?

Yes, she will. If your daughter has lived in your family's host country for 5 years at the end of the transition period, she is entitled to permanent residence in her own right. If she has lived there for less than 5 years at that time, she is allowed to move between the categories of student worker, self-employed person and person of independent means ([see here](#)) without loss of rights. So in this example she would qualify initially as a dependent family member and then have a status as a worker. Once she has accumulated 5 years of residence, she will qualify for permanent residence in her own right. She will not however benefit from all of the same rights as you - only the rights that the WA gives family members. This means that she will not have the same rights as you to family reunification later.

8) I've lived in France for 10 years but I'd really like to move to Spain. Could I do this before the end of the transition period and still be covered by the WA?

Yes, you'll keep your current free movement rights until the end of the transition period, which means that you'll be able to move from one EU country to another during that time. Because you've lived in France for more than 5 years you'll have acquired permanent residence rights there, but you won't be able to carry these rights across to Spain - instead, the 'residence period clock' will start again at zero when you arrive in Spain and you'll once again have to build up your years to 5 to get permanent residence there. This means that you'll need to meet the conditions for legal residence there during those 5 years.

9) I live in the UK - will the WA cover me if I move to an EU country after the end of transition?

No. When the UK leaves the EU, it will become a 'third country' - a country which is not a member of the EU. During the transition period, EU law including free movement will continue to apply to the UK and its citizens. But at the end of transition, freedom of movement will end for British citizens, unless its continuation is negotiated as part of the future relationship (this is extremely unlikely).

The WA only covers those who've already exercised their rights to free movement and are legally resident in an EU country at the end of the transition period, currently set at 31 December 2020. If you want to move to an EU country after that, you'd have to meet the conditions of the national immigration rules in that country.

10) I'm a British national who's been living in Spain for 6 years now, and I now also have Irish citizenship. I receive a UK state pension and have an S1 form. How am I affected?

Your Irish citizenship means that you'll keep your EU citizenship, and along with it your rights of free movement. If you wish you can apply for a permanent residence card in Spain as an Irish citizen. The health and social security provisions of the WA will continue to apply to you as long as you continue to live in Spain, so your S1 health cover will continue. And as you moved to Spain as a British citizen under EU free movement law, at the same time the other provisions of WA should also apply to you so you can still benefit from these where they are more favourable - for example, as you qualify as a permanent resident in Spain you can be absent from Spain under the WA for up to 5 years without losing your residence rights, as opposed to 2 years using your rights as an Irish citizen. There are some outstanding questions about how you would also be identified as a beneficiary of the WA if you register in Spain as an Irish citizen; we have raised these, and the European Commission and UK authorities are preparing a joint guidance memorandum to the WA which we hope will cover questions like this one. We'll be scrutinising and monitoring it when it's published.

11) I'm now a dual national, having acquired citizenship of my host country. How am I affected?

Your citizenship of your host country gives you an unconditional right of residence there, but because you originally moved there as a British citizen under EU free movement law and only acquired citizenship of your host country subsequently, at the same time the WA should still apply to you subject to certain conditions. You'll benefit from its social security provisions and should also be able to rely on it to cover other issues such as recognition of qualifications and family reunification. The European Commission and the UK authorities are preparing a joint guidance memorandum to the WA to deal with questions like this, and we'll be scrutinising and monitoring it when it's published.

Residence questions

12) I keep reading about something called 'legal residence' - what does that mean and why does it matter?

EU law gives EU citizens the right to go and live in another EU country, but only if they meet certain conditions. These conditions are also applicable to those covered by the WA. For the first 3 months there are no conditions. After 3 months you have to be working or self-employed, self-sufficient (living on your own resources, whether retired or other), a student (who also needs to be self-sufficient) or a family member of any such person. People who are self-sufficient or students have to have health insurance (for state pensioners or others who hold one, the S1 form is sufficient). After 5 years these conditions fall away and you will be entitled to 'permanent residence'. If you meet the conditions explained above, you are said to be legally resident.

To have your residence and most other rights protected under the WA, you have to be legally resident in your host country at the end of the transition period, currently set for 31 December 2020, so it's very important before then to make sure that you meet the conditions and also to make sure that you have registered your residence if your host country requires it (most do). If you haven't registered as a resident before the end of transition you may find that you're not covered by the WA.

13) I'm a UK citizen and am currently studying at a university in an EU country. My course ends in 2022. Will I be able to stay and work here if I want to?

Yes, you will. The WA allows you to change status, for example between student and worker, so once your course finishes you'll be able to stay and take a job in your host country. If your host country chooses the constitutive or application system to certify your rights ([see here](#)) you'll have to apply for a residence document before 1 July 2021 as a student. Once you've lived in your host country for 5 years (and you can combine the years spent as a student with those spent working) you'll qualify as a permanent resident.

14) Is there any way I can qualify for permanent residence before I've lived in my host country for 5 years?

In some specific instances, and only if you are or have been legally resident in your host country as a someone who is employed or self-employed, then you can indeed qualify under EU law for permanent residence in less than 5 years. The WA continues these rights and you may qualify if you meet one of these conditions:

- if you retire after working in your host country for 12 months and have lived there continuously for 3 years;
- if you stop working because you become permanently incapable of work (eg illness) and have lived in your host country continuously for 2 years;
- if you stop working because you're no longer able to work due to an accident at work or occupational illness. In this case you attain the right to permanent residence regardless of how

long you have lived in the country prior to the accident or malady;

- if you start working in another EU country as a cross-border worker - you must return to your place of residence at least once a week - but have worked in your host country for 3 years continuously beforehand.

15) My host country requires all British residents to apply for a new residence document. What if I haven't applied for or received my new residence document before 1 July 2021?

This will mean that your host country has adopted a constitutive system.

If you *have applied* for your new residence document before 1 July 2021 but you haven't received it, don't worry - your rights are fully covered while you wait for your document to arrive. You should have received a certificate of application from your registration office which will prove that your application is in the pipeline.

If on the other hand you *haven't applied* for your new document by 1 July 2021, then your registration office has to assess whether you had 'reasonable grounds' for missing the deadline. If, having considered all the reasons and circumstances, it considers that you did have reasonable grounds, then it will allow you to apply within a 'reasonable further period of time'.

You are however strongly advised to apply before the deadline to avoid any such issues.

16) My host country has adopted a constitutive system and we have to apply for a new status and residence card - all 150,000 of us! What happens if it becomes totally overwhelmed by all the applications and the system just can't cope in the allotted time?

The WA makes provision for this kind of scenario. Firstly, it allows countries to begin accepting applications during the transition period. Secondly, it provides for a minimum grace period of 6 months from the end of the transition period - up to 30 June 2021 unless the transition period is extended. All applications must be made by the end of this period (unless the host country has set a longer grace period). During this grace period all the rights in the WA will still apply to you even if you haven't yet applied for or received your new card. And thirdly, this grace period can be extended for up to a year if a host country encounters 'technical problems' that prevent it from registering the application or issuing a certificate of application during that 6 month period. During this extended period your rights would be fully preserved.

17) The company I work for is having some problems and I'm worried I could lose my job. What would happen to my residence rights then - will I still be able to stay them if I'm unemployed?

If you have permanent residence (ie been legally resident in the country for 5+ years) your residence right no longer depends on your having a job, so if you lose your job you will still have the right to stay.

If you do not have permanent residence and but find yourself in one of the situations described below, you retain your status as worker and your right to legal residence that comes with it if:

- you've been an employed worker for at least 12 months and have lost your job, and are registered with your employment office as a jobseeker. This doesn't apply if you make yourself voluntarily unemployed though; or
- you are undergoing vocational training; or
- you are employed or self-employed, and you become temporarily medically unable to work as a result of illness or accident, but only for as long as that inability lasts.

You'll retain your status as worker for 6 months if:

- you lose your job within the first 12 months of your contract; or
- you become unemployed at the end of a contract which was for less than 12 months.

Health and pensions

18) I'm retired and live in Italy. Last year I had a letter from the British government telling me that my S1 health cover would only last for 6 months after Brexit. Now you're telling me that I will keep it for life. I'm confused.

Last September, the UK government announced that S1 health cover would only continue for 6 months after Brexit and it wrote to S1 holders to tell them this. However, this would have applied only in the case where the UK left the EU without a withdrawal agreement - a 'no deal' exit - which was a likely scenario at that time. It does NOT apply now. During the transition period, none of your rights (other than political rights) will change and after transition, the rights covered by the WA will continue for the whole of your lifetime, or until you stop meeting the conditions (for example, you move permanently out of your host country back to the UK). So please don't worry that your S1 health care is time limited - under the WA, it isn't!

19) Will my UK state pension continue to be uprated in future? If so, for how long?

Yes, under the WA your UK state pension - whether you are already in receipt of it or whether you will qualify to receive it in the future - will be uprated each year for the rest of your life, just as it would be if you were still living in the UK. Last September the UK government announced that pension uprating was only guaranteed until March 2023. However, this would have applied only in the case where the UK left the EU without a withdrawal agreement - a 'no deal' exit - which was a likely scenario at that time. It does NOT apply now that the WA is in force. The rights covered by the WA will continue for the whole of your lifetime if e.g. you remain in your host state or return to the UK. So please don't worry that your pension uprating is time limited - under the WA, it isn't!

20) I live in the Netherlands - I have a UK state pension and an S1 form from the UK. I travel back to the UK often and as my health isn't good, I'm concerned about whether I'll still be able to access NHS health care while I'm there.

As you're a UK state pensioner who holds an S1 form registered in an EU/EEA country, you're also entitled to receive full medical care in the UK, on the same basis as someone who is ordinarily resident there. If possible, it's best to produce your S1 to benefit from this.

21) I'm a British citizen who lives and works in Italy. I am registered with the health service there and hold a European Health Card (EHIC equivalent) issued by Italy that covers me for temporary absences in other EEA countries and Switzerland. Will the WA mean that this will continue to cover me in the UK after the end of the transition period?

As you are a British citizen who is covered by the health service in an EU country under its national legislation before the end of the transition period and with a European Health Card, you will be able to continue to use your EHIC in the UK as you do now, as the coordinated healthcare system will continue for you as it does now.

Working rights and equal treatment

22) I'm a civil servant in my host country, and jobs like mine are only open to EU citizens. Will I lose my position after Brexit?

Under the WA, workers have the right 'not to be discriminated against on grounds of nationality as regards employment, remuneration and other conditions of work and employment' and 'to take up and pursue an activity in accordance with the rules applicable to the nationals of the host state or the state of work. This applies in your host country, or if you're a frontier worker, in your country of work. It effectively replicates the rights that you currently enjoy under EU law as an EU citizen, which means that nothing should change for you either during the transition period or after that period ends.

23) I've lived in my host country for just over 3 years and I currently receive social assistance payments to top up my very low salary. Will I continue to receive them after the end of transition?

Yes, you will. If you have a right of residence under the WA, you also enjoy the right to 'equal treatment'. This means that where you were entitled to a benefit or similar entitlement before the end of the transition period you will continue to receive it. It also means that those covered by the WA will be able to claim social assistance benefits under the same conditions as they could before Brexit as EU citizens. (Those with less than 5 years residence whose residence rights are based on 'self-sufficiency' - ie those who are retired or otherwise non-economically active - should take advice before claiming social assistance benefits).

Problems and appeals

24) What recourse would I have if I am refused a residence document under the WA?

Under the WA you would be able to appeal and/or ask for a review of any formal decision to refuse you a residence status or document, in the same way as you can now as an EU citizen. The process for this varies in different countries, and may begin with an 'administrative' request for review. You would also have the right to take your case to your national court, and ultimately to the CJEU (Court of Justice of the European Union).

25) Can I still use SOLVIT after Brexit?

SOLVIT is a scheme specifically set up to advise EU citizens on their rights. It will remain open to us until the end of the transition period, although it's still uncertain whether we will be able to continue using it after this point. We are checking this and will publish updates when they are available.

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