

# THE WITHDRAWAL AGREEMENT

## *2) Residence Rights and Procedures*

This is the second 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 has to say about residence rights and procedures in your host country.

The following articles will look at

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

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.](#)

**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.

## Residence Rights

- The current conditions for legal residence under EU law will continue to apply. After 3 months you have to fall into one of the following categories: employed, self-employed, non economically active but living on your own resources and self-sufficient, student (also must be self-sufficient). You can move between these categories as necessary as long as you meet the conditions. A family member of any nationality (see the first article) who doesn't meet the conditions for residence in their own right is also covered.
- People who are self-sufficient or students have to have health insurance (for pensioners or others who hold one, the S1 form is sufficient).
- After 5 years of continuous residence these conditions fall away, although you have to prove that you met them for a 5 year period, and you are then entitled to permanent residence.
- The 5 years can include years both before and after the effective date. Anyone with less than 5 years' residence before that date can build up their years until they reach 5, when they are eligible for permanent residence, under the same conditions as now.
- While you are building up your years to 5, you can be away from your host country for no more than 6 months every year without losing your resident status. You're allowed one longer absence of up to 12 months in the 5 year period for 'important reasons': eg childbirth, serious illness, study, vocational training or posting elsewhere.
- If you work or are self-employed, there are a few situations in which you may qualify for permanent residence earlier than 5 years - see the FAQ section for more on this.
- Once you have acquired permanent residence, you can be away from your host country for 5 years - an increase on the 2 years permitted for EU citizens - and still retain the right to return and keep your rights of permanent residence. This includes where you have acquired permanent residence before the effective date but are not actually resident in the country on the effective date e.g. because you are on a work posting or studying.
- Even if you have permanent resident status, if you are away from your host country for more than 5 years you would lose your automatic right to return under the WA and would have to return under the normal immigration rules in your country for third country nationals. You would lose your rights under the WA as you would no longer have the status of a permanent resident.

## Certifying our rights and applying for a new status

The WA allows each EU27 state to choose between 2 options for 'certifying' our rights from the end of the transition period:

### **1. A declaratory system - Article 18(4) of the WA**

This mirrors what happens now under the Directive, which simply confirms the rights that we already hold under the EU Treaty, whether as permanent residents (5 years or more) or temporary residents (less than 5 years). It means that as long as you meet the conditions, you hold the rights whether or not you make any form of application or hold a residence document. If an EU country adopts this system, the current system there is unlikely to change much but you will be able

to apply for a residence document to prove that you're protected under the WA (and would be advised to do so).

## **2. A constitutive system - Article 18(1) of the WA**

Under this system we would have to apply for a new status. This is the equivalent of 'settled status' for EU citizens in the UK and means that without a successful application by the deadline to apply, 30 June 2021, you won't acquire residence rights or a legal status under the WA.

We don't yet know for sure which option every EU country will choose, but it looks as though some will choose constitutive (eg France) while others will continue a declaratory system (eg Italy). You may want to save this part and come back to it when you know which system your host country will be using.

*Please remember that each country will now be publishing details of its own plans to implement registration procedures and the other citizens' rights under the WA, and will also have to implement this into its own national legislation. The procedures that you may have become familiar with in your country's no deal contingency plans will fall away on exit day, 31 January 2020, when the WA comes into effect - they are no longer relevant once the WA has been ratified because 'no deal' in this case meant no WA and so they will never come into force. This means that you now need to put aside what you've read and learned about no deal plans and legislation, and await new details from your host country about deal or WA plans.*

In the following paragraphs we look at what the WA has to say about procedures for applying for a new status and card under a constitutive system. All countries that introduce a constitutive system will have to follow this.

## **Residence cards under a constitutive system - general**

If you live in a country that opts to use the constitutive system, you'll have to apply for a new status and residence card even if you currently hold a card. Some countries using the declaratory system may also issue new cards, and in any case you have the right to ask for one. All cards and other registration documents will state that they have been issued under the WA.

Your own host country will be putting into place its own procedures for applications, but the WA has a few things to say about the process that every country will have to follow:

- If you can prove that you are entitled to residence rights under the WA then you will have a right to residence status and a document verifying it - in other words there's no discretion for your country to refuse a residence document *as long as you meet the conditions*.
- You *may* apply for your new card/status within the transition period if your host country puts procedures in place to do so, but any decision to accept or refuse your application won't come into effect until the end of the transition period and you retain your current rights until then.
- Your host country must issue a certificate of application as soon as you've applied for your new card/status.
- You *must* apply for your new card/status at the latest within 6 months of the end of the transition period - so up to 30 June 2021 unless the transition period is extended. 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.
- This grace period can be extended for up to a year if a host country encounters 'technical

problems' that prevent it from meeting the 6 month deadline. This could be a useful fallback for countries that become overwhelmed by the number of applications.

- If you miss the deadline to apply, your registration office has to assess whether you had 'reasonable' grounds for missing it - if so you'll be allowed to apply within a reasonable time frame. This is, though, at its discretion, and is not a right.
- If you apply and are refused before the end of the transition period, you can apply again at any time before the deadline of 6 months from the end of the transition period is up i.e. before 30 June 2021. This would allow you time to try and ensure that you meet the conditions.
- Your host state must put into place administrative procedures for applications that are 'smooth, transparent and simple', with application forms that are 'short, simple and user friendly'. This should reassure you if you live in a country where current registration procedures are rather more complex and time-consuming!
- The WA also requires your registration office to help you 'prove your eligibility' and 'avoid any errors or omissions' in your application. It must also give you the opportunity to provide any extra evidence and/or correct any mistakes you may have made.
- Applications made by families at the same time must be considered together.
- The registration document should be free, or at least any fee mustn't be more than that charged to nationals of your host state for a similar document.

## Residence cards under a constitutive system - procedures and supporting documents

- If you hold a current permanent residence card or document as an EU citizen before the end of the transition period, you can *exchange* this for a new residence document with few formalities. You'll need to verify your identity (via your passport) and confirm your ongoing residence, plus you may be subject to a criminality and security check. Your new document will be free of charge.
- For those who don't currently hold a permanent residence card or document the WA outlines the supporting documents that your country can ask you to provide to support your application. These are much the same as those currently requested for registration purposes in most countries, although the WA allows your host country to carry out systematic criminality and security checks if they choose to do so.
- If you're *employed*, you'll need a certificate of employment or confirmation of engagement from your employer.
- If you're *self-employed*, you'll need proof of your self-employment.
- If you're not *economically active* - for example, you're retired or early-retired, or you don't work for any other reason - you'll need evidence that you're 'self-sufficient': that your resources are enough to live on without being deemed to be a burden or potential burden on the social assistance scheme of your host country. You'll also need evidence that you have 'comprehensive health cover', which may be via your country's own health system or via private health insurance which gives equivalent cover. An S1 form is sufficient for those who receive a UK state pension or other qualifying benefit.

- If you're a *student*, you'll need proof that you're enrolled in a registered educational establishment. You'll also need proof of comprehensive sickness insurance, and a declaration or equivalent means of proof that you have sufficient resources to live on without being deemed to be a burden or potential burden on the social assistance scheme of your host country.
- If you're applying as a *family member* of a British citizen, you'll need to provide evidence of your family relationship and (usually) proof that the person you live with is legally resident in your host country - for example, their residence card. Other proofs may be needed in specific circumstances, for example proof of age or dependency.

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