

THE GUIDANCE NOTE

Part 2 - family members, future family reunification and dual nationals

Introduction

In May 2020 the European Commission published a [Guidance Note](#), which will be used by the national authorities in all EU countries and the UK to help make sure that the citizens' rights provisions of the WA are correctly implemented. The Guidance Note explains what it may and may not cover, and much of what it has to say is useful for all of us as we prepare for the post-transition period.

This is the second of 3 British in Europe information articles designed to help you understand the most important clarifications in the Guidance Note and how they may affect you. In this article we focus specifically on family members, future family reunification and dual nationals. It is designed to be read alongside our earlier WA explainers that include [family members residence rights](#) and family reunification.

The first article covered residence rights and procedures - you can read that [here](#).

The next article will look at pensions, benefits and health care.



About British in Europe

British in Europe is a coalition of grassroots citizens' organisations and the largest grouping of UK citizens in the EU. It was founded in early 2017 to give UK citizens living, working and studying across the EU a voice in the Brexit negotiations.

We are the organisation of reference **on citizens' rights for UK nationals in the EU**. Since 2017 we have been recognised by the British government, the European Commission, the Council and the European Parliament as trusted interlocutors, meeting secretaries of state, ministers in member states and key EU and British officials. Our ten-person **Steering Team** has campaigned jointly with **the3million**, which represents EU27 citizens in the UK. Together, we have pressed to keep our existing rights and to prevent Brexit from destroying the lives and families we have created whilst exercising those rights.

For our advocacy, we have produced dossiers highlighting **the human and legal cost of Brexit** for the 1.2 million UK citizens in the EU. We have given evidence at the European Parliament, Westminster and national and regional parliaments around the EU. With the3million, we have explained our plight to senior politicians such as Michel Barnier and Stephen Barclay, as well as Brexit coordinators and MEPs from all the main political groups in the European Parliament. We have provided expert analysis across the media and built up a strong social media presence to show how losing our rights will affect our everyday lives.

WHAT WE HAVE ACHIEVED SO FAR:

The Withdrawal Agreement

Working with the3million, British in Europe ensured that citizens' rights was the top priority in negotiations. We had a major impact on the citizens' rights chapter, feeding into each round of negotiations. We highlighted areas such as **dual national rights** and the need for **clarity on healthcare and social security**. We persuaded both sides to extend the **right of absence** for permanent residents from two to five years. We widened the initial focus of negotiators to ensure that issues affecting **UK nationals of working age** and particularly **young people** were prioritised.

Implementation of the Withdrawal Agreement

The advocacy of BiE country groups has affected member states' decisions to choose between **declaratory and constitutive systems** to secure our rights. For example, we believe that **British in Germany's** campaign for a declaratory system has had a clear impact given the recently published draft legislation proposing that option.

UK Government Issues

We obtained a commitment that UK nationals in the EU27 wishing to study in Britain will be entitled to pay **home university fees instead of** expensive international fees for seven years from the end of the transition period. We also obtained **a grace period** until 2022 for British citizens returning to the UK with non-British family members without having to meet the requirements of normally applicable UK immigration law.

Information

BiE has provided **clear and accurate information on citizens' rights** for the UK nationals we represent. To governments and the media, we have supplied expert analysis with a strong legal basis on complex issues such as working rights, professional qualifications, pensions, healthcare and mobile citizens.

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www.britishineurope.org

What's covered in this article?

Family members and future family reunification

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Dual nationals

7. Dual nationals with citizenship of the UK and also of their host country
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9. Holding citizenship of a host country in which dual nationality is not permitted

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.

FAMILY MEMBERS AND FUTURE FAMILY REUNIFICATION

Although current residence rights of family members already resident in a host country are retained under the WA, some of the rights to future family reunification that apply under EU free movement rules have been curtailed.

If you have family members living with you in your host country (whether they are British, EU or non-EU nationals), if you have family members currently living in another country who may wish to join you in your host country after the transition period, or if you are a family member yourself there is important information here for you.

1. Family members - some definitions

EU free movement rules and the WA distinguish between two categories of family member: 'core' family members and 'extended' family members.

'Core' family members

- Core family members are those whose relationship to the main right holder is that of spouse, registered partner, direct descendant (child, grandchild etc) who is under 21, direct descendant who is 21 or older but still dependent, or direct ascendant (parent, grandparent etc) of the right holder who is dependent.
- Direct descendants (under 21 or over 21 but still dependent) of the spouse or registered partner and dependent direct ascendants of the spouse or registered partner are also considered to be core family members.
- Adopted children are treated in the same way as biological children.
- Certain other third country nationals whose presence is necessary to enable a UK national to exercise a right of residence under the WA: the most obvious example is where a minor UK citizen has moved to an EU country but cannot in practice stay there unless their third country national parent can reside there to look after them.

'Extended' family members

- For the purposes of the WA, a dependent family member who does not fall within the definition above but is already resident, or has applied for residence under EU free movement rules before the end of the transition period is covered by the definition of extended family member.
- Family members who do not fall into the definitions above but who need (for serious health reasons) the personal care of a British national who is already resident in a host country are also covered by the definition of extended family member.
- Those who are in an unregistered partnership but are in a 'durable relationship' with the main right holder before the end of the transition period also come into this category.

2. Residence rights of family members - basic principles

- Your existing family members - whether they are from EU or non-EU countries - who are already living with you in your host country at the end of the transition period, or (in some instances - see below) who wish to join you in your host country after the end of the transition period, can be covered by the WA.
- Although there are exceptions (see paragraph 4) family members' residence rights are not in principle independently held; instead they derive from **your** right to live legally in your host country and are conditional on being your family member. In this situation you are the **right holder**.
- In certain situations, however, a family member can acquire or have **independent residence rights**, i.e. rights that are no longer conditional on being a family member.
- This distinction may sound arcane but it is an important one, as family members who **do not hold an independent right to reside at the end of the transition period** will have no autonomous right under the WA to be joined by their own family members in future. Because this is important, we explain it in a bit more detail in the next two paragraphs.

3. Family members whose rights derive from the right holder

- In principle, family members don't have an independent right under EU free movement rules to move and reside freely (unless they are EU citizens themselves, or they have acquired an independent right of residence - see paragraph 4).
- Instead, family members' rights derive from the **right holder** - the person whose family member they are and who meets the conditions for legal residence (or to qualify as a frontier worker). Their rights are **conditional** on being a family member of a right holder under the WA.

Example 1: *you have lived in Belgium for 3 years, where you are self-employed. Your Thai wife lives with you. She doesn't have independent rights under EU free movement rules as she is not an EU citizen; instead, her rights are based on ('derive from') your rights. You are the right holder and your wife's residence card will identify her as a family member.*

- Family members who do not have an independent right to reside before the end of the transition period can still obtain one later by changing status - for example between student, worker, self-employed person and economically inactive person and by acquiring permanent residence. However such family members will **have no independent rights under the WA to be joined by their own family members**.

Example 2: *your Thai wife (example 1 above) has an elderly mother living in Thailand after the end of transition who as the years pass becomes dependent on her. She would like to bring her mother to live with her in Belgium but as she is your family member and she hasn't acquired an independent right to reside at the end of the transition period, she has no right under the WA to do this. Her mother would have to apply to live in Belgium under national immigration rules. Your own rights to future family*

reunification with family members existing before the end of transition do not help in this case because those only cover people who are directly related to you yourself, and not your spouse's descendants or ascendants.

4. Family members who have acquired an independent right to reside

- Some family members may acquire an independent right of residence under EU free movement rules. This means that their right of residence no longer depends on ('derives from') that of the right holder although it did so originally. These include:
 - a. Family members who have acquired **permanent residence status** after 5 years (less in some situations - see [FAQ 14](#) here) of legal residence with the right holder;
 - b. Certain family members with **retained rights** after the death or departure of the right holder or after divorce, annulment of marriage or termination of registered partnership.
 - c. Former family members who have changed status and **become right holders**, for example the 20 year old British daughter of a British national living in Germany who has a full time job and therefore now [meets the conditions for legal residence](#) in her own right.
- If a family member **has already acquired an independent right of residence at the end of the transition period**, they will retain this under the WA.
- Note that if a former family member such as the British daughter in (c) above does not have an independent right to reside at the end of the transition period they will never acquire the right under the WA to be joined by their own family members. This is because the WA expressly prevents them from becoming right holders.

Example 3: *your 20 year old British daughter starts work before the end of the transition period. She becomes a right holder and has the right under the WA to be joined in your host state by her own family members in future. Your 18 year old son, however, starts work in 2022. He cannot become a right holder as his status changed after the end of transition, and he does not and will not have the right to be joined by his own family members in future.*

- Dependent family members who can obtain an independent right to reside before the end of the transition period are strongly advised to do so if possible. The daughter in Example 3 has already done this, and if the son could register as a student before the end of the year that would have the same effect.
- **If your family member also has an independent right of residence (for example, as a worker or a student) before the end of the transition period, they are therefore strongly advised to take any steps necessary in your host country to register in that capacity with your national registration authority.**
- The Guidance Note specifically states that a family member who has become a right holder as in point (c) at the end of the transition period will have the right under the WA to be joined by their

own family members. However, it does not discuss those in points (a) and (b) above. British in Europe is actively seeking clarification on these two points from the European Commission.

5. Family members, future family reunification and the WA - the detail

In the following paragraphs we explain how the WA treats each category of family member in different situations.

A. Core family members already **resident in your host country** at the end of transition

- Your core family members who are already resident in your host country at the end of the transition period will be covered by the WA as long as they continue to live in your host country after the transition period.

B. Core family members **resident outside your host country** at the end of transition

- Your core family members can join you in your host country at any point in time after the end of the transition period, providing (a) you were legally resident in your host country, and (b) the relationship between you already existed, both at the end of the transition period and both factors continue to apply when they seek to join you.

C. Children **born or adopted** after the end of transition

- If you have children (including by adoption) after the end of the transition period they also are covered by the WA. This applies whether they are born in your host country or outside it. At the time they were born, or at the time they join you in your host country if born outside it, one of the following conditions must apply:
 - **Both you and the other parent are right holders under the WA.** There is no formal requirement for parents to have sole or joint custody rights of the child; or
 - **One parent is a right holder under the WA and the other is a national of your host country.** Again, there is no formal requirement for parents to have sole or joint custody rights of the child, and this provision does not require that the non-right holder parent is resident in the host country; or
 - **One parent is a right holder under the WA and has sole or joint custody rights of the child.** This provision covers all situations in which the child has only one parent who is a right holder, except when that parent has lost the custody of the child. It covers both families with two parents and single parent families.
- Children born or adopted after the transition period cannot acquire the right under the WA to be joined by their own family members but will otherwise have the same rights as others under the WA in due course (eg to reside as a student, worker, self-employed person, to equal treatment etc).

D. Extended family members already **resident in the host country** at the end of transition

- Your extended family members who are already resident in your host country at the end of the transition period will be covered by the WA, as long as they continue to live in your host country after the transition period.

E. Extended family members with a **pending application for residence** at the end of transition

- Your host country is required to 'facilitate entry and residence' for extended family members in accordance with its national legislation; it must consider any applications that have been made before the end of the transition period but on which the decision is still pending. This will involve an extensive examination of the personal circumstances of the case. If the application is granted, your extended family member will be covered by the WA as long as they continue to live in your host country.

F. Extended family members **resident outside the host country** at the end of transition

- The WA does not cover your extended family members who are resident outside your host country at the end of the transition period and who have not made an application to join you before that date, unless they are your partner in a durable relationship and covered by paragraph H below. They would have to apply for residence under national immigration rules.

G. Those in an existing durable relationship where **both partners are resident in the host country** at the end of transition

- A durable relationship is a stable relationship where the partners aren't married or in a registered partnership. Your partner who is already resident in your host country at the end of the transition period will be covered by the WA as long as they continue to live in your host country after the transition period.

H. Those in an existing durable relationship where **one partner is resident outside the host country** at the end of transition

- If your partner was resident outside the host state at the end of transition, they have the right under the WA to apply to join you in your host country if (a) you were in a durable relationship at the end of the transition period; and (b) you are still in a durable relationship at the time they apply to join you. Your host country must 'facilitate entry and residence' for your partner in accordance with its national legislation. This will involve an extensive examination of the personal circumstances of the case. If their application is agreed they will be covered by the WA as long as they continue to live in your host country.
- The same rules apply if you were in a durable relationship at the end of the transition period and are married to that person at the time your spouse applies for residence.

I. Future spouses and future partners

- This means a spouse or a partner that you weren't already in a relationship with at the end of the transition period. There is no right under the WA to be joined by a future spouse or partner. Any future spouse or partner who is not themselves an EU citizen would have to apply for residence under national immigration rules as a third country national, and would not acquire rights under the WA.

6. British nationals married to, or in a registered or durable partnership with, an EU citizen

- After the end of the transition period you will have rights as a right holder under the WA, and at the same time you will have rights as a family member of an EU citizen.
- Your spouse or partner may be a **national of your host country**, in which case you will have rights as a family member of a national of that country under its national law. This would include the right to move with your spouse or partner to another EU country as their third country national family member, under EU free movement rules.
- Alternatively your spouse or partner may be an **EU national of a country other than your host country**. In this case you will already have rights as a third country national family member of an EU national under EU free movement rules.
- You may want to both register as a family member of your EU spouse or partner, and [also secure your rights as a right holder under the WA](#). The Guidance Note doesn't currently cover this situation or cover the relationship between two statuses. British in Europe is actively seeking clarification of this and we will update you as soon as possible.

DUAL NATIONALS AND THE WA

7. You are a dual national, holding citizenship of the UK and also of your host country

- You do not have to rely on the WA for your residence rights in your host country as these derive from your citizenship of that country, where you have an unconditional right to reside.
- However, you may still need to rely on some of the rights covered by the WA - for example, family reunification rights, those relating to the recognition of your UK qualifications or your social security rights.
- You will benefit from rights under the WA if **before the end of the transition period you had exercised EU free movement rights in the country of which you hold nationality** - in other words, if you originally moved there as a UK citizen under free movement rules and later acquired

citizenship of the host country. This is because in 2017 a CJEU judgement (Lounes) ruled that acquiring citizenship of the country in which they reside does not mean that EU citizens lose the EU citizenship rights that they enjoyed as mobile EU citizens before acquiring that citizenship. In other words, they cannot simply be treated as a national of the relevant country who has never exercised free movement rights.

- This applies even if you acquire citizenship of your country of residence after the end of the transition period.

***Example 4:** 11 years ago you moved to France as a UK citizen exercising your EU free movement rights. 3 years ago you applied for French citizenship, which was granted a year ago. You have an unconditional right to reside in France as a French national. But because you originally moved there as an EU citizen under free movement rules, you also have the right to be considered as a beneficiary of the WA.*

8. You are a dual national, holding citizenship of the UK and also of a second EU country (but not the one where you live)

- You do not have to rely on the WA for your residence rights in your host country as you continue to have the right to reside there as an EU citizen, using your second citizenship. In this way you retain all your current residence rights after the end of transition, as well as the right of free movement.
- However, you may still need to rely on some of the rights covered by the WA - for example, those relating to the recognition of your UK qualifications, or social security rights - and therefore to secure your rights as a right holder under the WA.
- You will benefit from rights under the WA if **before the end of the transition period you exercised EU free movement rights in a member state other than that of which you hold nationality** - in other words, if you originally moved there as a UK citizen under free movement rules.

***Example 5:** 11 years ago you moved to France as a UK citizen exercising your free movement rights. 3 years ago you applied for Irish citizenship, which was granted 2 years ago. After the end of the transition period you will retain the right to reside in France as an EU citizen retaining all your current residence rights, using your Irish citizenship, but you also have the right to be considered a beneficiary of the WA.*

9. You have citizenship of a host country in which dual nationality is not permitted

- The Guidance Note does not currently cover this situation. British in Europe is actively seeking clarification from the European Commission.

Two things to note

- The Guidance Note doesn't talk about how dual nationals will be able to show that they're covered by the WA - what evidence you may need and how that will be obtained. Again, this is a subject on which British in Europe is seeking clarification from the European Commission.
- The scope of those covered by the social security, healthcare and pensions provisions of the WA is wider than that of the rest of the Withdrawal Agreement. You will be covered for those provisions as a dual national if you are in their scope. See Article 3 in this series for more about this.

This is the second article in British in Europe's June 2020 information campaign about the Guidance Note to the Withdrawal Agreement and how it affects you as a British citizen living in an EU country.

If you have found this useful, please consider a regular donation to ensure we can continue to produce information guides.

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