

Where does the March agreement leave me?

<https://britishineurope.org/where-does-the-march-agreement-leave-me/>

On Monday 18 March, the European Commission published its third draft legal text for the Withdrawal Agreement and announced that it and the UK had reached “complete agreement” on citizens’ rights.

You're probably wondering whether that is in fact the case, and where the March agreement leaves you. This is a quick (and non-exhaustive) general summary of the state of play. It's a mixture of good news, bad news and unfinished business, the balance of which is different for each of us, depending on the particular situation that we are in.

We are still hoping that the unfinished business, such as whether we have free movement across the EU 27, will be discussed in the second phase and we at RIFT and British in Europe are continuing to campaign hard for that. Our big concern is that it could get lost in the mass of issues now to be discussed such as airline slots. And until the final agreement is signed, none of this is set in stone - although it is unlikely that what has been agreed so far will be changed, if there is no deal then there is no guarantee of our rights.

One big change following the draft agreement is that there will - assuming that the final agreement is ratified - be a transition period which will last until 31 December 2020, and that all our rights will remain unchanged until then. This is the 'effective date' referred to in the paragraphs that follow.

The good

If you are ‘legally resident’ on transition day you can stay – but in some countries you may have to make an application to secure this (see below). This includes people who have moved to the EU27 up to the end of transition on 31 December 2020, who will now be covered by the Withdrawal Agreement on the same terms as those present before Brexit day itself.

The current conditions under EU law will apply. For the first 3 months there are no conditions. After 3 months you have to be working/self-employed, self-sufficient, a student or a family member of any such person. 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 these conditions fall away and you will either be entitled to ‘permanent residence’ or may have to apply to secure it.

The 5 years can include years both before and after the effective date. Anyone with less than 5 years’ residence can build up their years until they reach 5, when they are eligible for permanent residence, under the same conditions as now (see above).

If you have acquired permanent residence, you can be away from your host country for 5 years and still retain the right to return and keep your rights of permanent residence.

Reciprocal healthcare is agreed, so that those who have an S1 or will be eligible for one when they retire will still have their healthcare funded by the UK. This includes a UK issued EHIC which will cover travel across the EU27 and to the UK.

Aggregation of social security contributions is agreed, both before and after the effective date.

Lifetime export of uprated pensions is agreed - so your UK state pension will be increased annually just as it would be if you were living in the UK.

There is some agreement on recognition of professional qualifications – if you have an individual recognition decision re. your qualification including through automatic recognition eg. doctors, architects, your qualification will continue to be recognised but only in the country where the decision was issued.

If you are a 'frontier worker' according to EU rules – living in one country and working in one or more other countries at the effective date – you will still have the right to work in each country.

Certain close family members (spouse, partner, direct ascendants/descendants who are dependant on you) will be able to join you if your rights are protected under the withdrawal agreement. This will apply for the whole of your lifetime. If you have children after the effective date they also are protected under the withdrawal agreement if you and the other parent are also protected or a national of the country you live in .

What hasn't been included

Continuing freedom of movement – i.e. the ability to move, reside and work in EU27 countries other than our country of residence/frontier working. This is still to be discussed in the second phase. If the final withdrawal agreement does not include a right of free movement across the EU 27 for UK citizens in the EU, there is EU legislation dealing with rights of third country nationals (non-EU citizens) to move within the EU. How this might apply to UK citizens in the EU would have to be agreed but it is fair to say that it doesn't offer the same free movement rights as we have now as EU citizens and is considerably more restrictive.

The right to provide cross-border services as self-employed people.

Some professional qualifications e.g. lawyers practising under their home titles and EU-wide licences and certificates are not covered, and recognition outside the country of recognition/residence across the EU 27 is still to be discussed.

The right to be joined by a future spouse or partner - ie one that you weren't in a relationship with on the effective date.

The right to return to the UK with a non-UK spouse or partner under the much more favourable EU law regime.

Ring-fencing of the agreement so far.

So should you be happy?

It's reasonable to say that for those who are happily settled in France, work solely in France, have retired here or are pre-retired, have no wish or need to move to or work or study in another EU country, fulfil all the requirements for exercising treaty rights (see here) and don't rely on professional qualifications, then your rights are should be covered.

But ...

The agreement allows each EU27 state to choose between 2 methods of 'certifying' our rights after Brexit.

EITHER: they can adopt what's called a *declaratory* system, which mirrors what happens now and simply certifies the rights that we already hold, whether as permanent residents (5 years or more) or temporary residents (less than 5 years). If France adopts this system, it can choose whether or not we need to hold a residence card.

OR: they can adopt a *constitutive* system. Under this, we would have to APPLY for a new status; the application process would include checks on whether people had been exercising treaty rights, as well as criminality checks. This is the equivalent of the UK proposal for EU citizens of 'settled status'; the concept of reciprocity has led to this being an option for each EU27 country if they wish to adopt it.

The draft Withdrawal Agreement appears to favour the constitutive system, to which it devotes many paragraphs of detail. We have no idea yet whether France or any other EU country will choose to impose this system - though it must remain a possibility given that all EU citizens in the UK will be subject to it. It's not good news, because (i) it means we would have to apply for a new status instead of having our existing rights confirmed (ii) some people would struggle to find the proof that they meet the statutory requirements of 'legal residence' and (iii) as we all know, bureaucracies can make mistakes.

This is one of the major objections by RIFT and British in Europe to this agreement. Another is, of course, the fact that free movement isn't included. This is a big deal for many people whose livelihood depends on being able to work in an EU country other than their country of residence and who don't fall under the definition of a frontier worker. This particularly affects cross-border workers, especially the self-employed. It also matters to our children, who would find their rights to study elsewhere in the EU27 curtailed without it. And it has a big knock-on effect for the territorial scope of professional qualifications and economic rights (e.g. to run a business), which currently would only apply in our host country.

In a nutshell, we think the draft agreement has more holes than a piece of French Emmental.

We shall be continuing our strong advocacy campaign on all these issues in months to come to ensure that outstanding issues don't fall off the table. Watch this space, our Facebook group and in particular the British in Europe website for updates.

If you want to consult the source documents directly:

This is the first: Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union. This is the December agreement that forms the basis of the draft Withdrawal Agreement.

https://ec.europa.eu/commission/sites/beta-political/files/joint_report.pdf

This is the second: Comparison of UK/EU positions on citizens' rights, December 2017. This is the December edition of 'the table' that compares each side's position on all the aspects of citizens' rights. https://ec.europa.eu/commission/sites/beta-political/files/citizens_rights_-_comparison_table.pdf

And finally: Draft Withdrawal Agreement 19 March 2019 . This is the current draft, coloured according to agreement between each side (green means full agreement: the paragraphs on citizens' rights are all coloured green). http://ec.europa.eu/commission/sites/beta-political/files/draft_agreement_coloured.pdf