

### Where does the December agreement leave me?

This is a quick (and non-exhaustive) general summary of the state of play after the phase 1 agreement on citizens' rights. 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.

The unfinished business, such as whether we have free movement across the EU 27, will be discussed in the second phase. Our concern is that this 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.

Added to the mix, the European Council agreed today that it was prepared to negotiate a transition period of two years with the UK. If negotiated, it would delay implementation of the agreement, including on citizens' rights. Depending on what is negotiated, it would probably mean that our rights to live and work in the EU won't change substantially from what they are now during that period.

#### The good:

If you are 'legally resident' at Brexit you can stay – but in some countries you may have to make an application to secure this (see OPTION 2 below and our concerns about this).

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 Brexit.

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.

If you are a 'frontier worker' - living in one country and working in one or more other countries at Brexit - you will still have the right to work in each country.

Reciprocal healthcare is agreed; if you have an S1 from the UK or will get one when you retire you'll still have your healthcare funded by the UK.

UK pensions will be uprated in accordance with inflation and aggregation of social security contributions including pensions is agreed, both before and after Brexit day.

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.

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 Brexit day 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 –and 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 various EU legislation dealing with rights of 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.

Some professional qualifications e.g. lawyers practising under their own 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.

Territorial scope of economic rights, e.g. secondary establishment and cross-border provision of services has not been agreed yet nor have rights of posted workers.

The right to be joined by a future spouse or partner - i.e. one that you weren't in a relationship with on Brexit day.

Ring-fencing of the agreement so far.

### **So should you be happy?**

If you're happily settled in your host country, work solely there or are 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 and don't rely on professional qualifications, then your rights should be covered. But ...

### **How your rights will be confirmed:**

EU27 countries will have two options:

OPTION 1: They can adopt what's called a *declaratory system*, in line with current EU law, which mirrors what happens now and simply confirms the rights that we already hold, whether as permanent residents (5 years or more) or temporary residents (less than 5 years).

OPTION 2: 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.

### **Why British in Europe thinks there is still a long way to go**

One of British in Europe's major objections to the agreement concerns OPTION 2 because (i) this means we will have to apply for a new status instead of having our existing rights confirmed (ii) some people will struggle to find the proof that they meet the statutory requirements of 'legal residence' and (iii) bureaucracies can make mistakes.

Another is the fact that continuing freedom of 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 your host country.

**We will be pursuing a strong advocacy campaign on all these issues in months to come to ensure that outstanding issues don't fall off the table and are included in the withdrawal agreement.**