

# The rights of non-UK EU citizens are still not a 'done deal'

*In his first appearance in the House of Commons as Prime Minister, Boris Johnson said that non-UK EU citizens would be 'guaranteed' the right to stay after Brexit, restating an earlier promise. However, the government has proposed no new primary legislation to achieve this. **Alexandra Bulat** explains how the existing settled status scheme still falls short of enshrining automatic rights, and how a 'no deal' Brexit would mean further uncertainties and inequalities in EU citizens' rights.*



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Last year, I wrote a blog post for *LSE Brexit*, where I explained there remained many uncertainties when it came to [the post-Brexit rights of non-UK EU citizens in the UK, which were not a 'done deal'](#). I referenced the Vote Leave [promise](#) to EU citizens in 2016 that they will be 'automatically' granted indefinite leave to remain and will be 'treated no less favourably than they are at present.' This statement was signed by our new Prime Minister, Boris Johnson, and our new Home Secretary, Priti Patel.

We are no closer to delivering on the promises of the 2016 referendum than we were last year. In March 2019, the [EU Settlement Scheme](#) opened for all non-UK EU citizens and [over 900,000](#) people have already applied. While [some commentators](#) say EU citizens 'can stay without any conditions', the requirement for non-UK EU citizens to continue to live, work and study in the UK after Brexit is making a successful application and receiving either 'settled status' (indefinite leave to remain) or 'pre-settled status' (limited leave to remain). Making an application, providing evidence and awaiting a decision is far from the 'automatic grant' of status promised three years ago by Leave campaigners and politicians. Moreover, a significant proportion of applicants so far have been granted 'pre-settled status' ([39% of those who applied in June this year](#), for instance) and they will need to re-apply for settled status when they can prove five years of residence in the UK.

The EU Settlement Scheme is not what was promised. Its legal foundations are also shaky while we do not know how the Brexit stalemate will be resolved. Over the past months, campaigners have been calling for measures to enshrine citizens' rights in UK primary legislation, regardless of the outcome of Brexit, to offer more certainty to those affected. The UK-EU [Withdrawal Agreement](#), rejected by the UK Parliament on three occasions, protects a range of rights for both non-UK EU citizens in the UK and UK citizens in other EU member states. A cross-party group of MPs, led by Conservative backbencher Alberto Costa, some MEPs, and citizens' rights campaign organisations the3million and British in Europe, have been calling for measures to ringfence citizens' rights provisions from the Withdrawal Agreement. In other words, they want an international treaty that protects the rights agreed by the two negotiating parties in all Brexit scenarios. The ['Costa Amendment'](#), passed unanimously by the UK Parliament earlier this year, calls for this provision. However, although ringfencing is possible from a [legal and technical point of view](#), it ultimately remains a political decision, and no conclusion to this issue has been reached. [Some MPs](#) even stated they would be prepared to support a 'no deal' Brexit if citizens' rights were protected separately, which was not how ringfencing proponents intended this to be used.

## What happens in the event of a 'no deal' Brexit?

The legal limbo continues for over three million non-UK EU citizens in the UK and over one million British people in other EU states. With a 'no deal' Brexit outcome becoming [more likely](#), citizens are increasingly worried about the impact this may have on their lives. So, what changes in the event of a 'no deal'? One key difference is the deadline for EU citizens to apply for settled status – this is 31 December, 2020, in a 'no deal' situation, compared to 30 June, 2021, if a Withdrawal Agreement is agreed. Thus, a 'no deal' scenario would give the Home Office less time to process the millions of applications to the EU Settlement Scheme. In all scenarios, it is wishful thinking to assume every single non-UK EU citizen in the UK (and their non-EU family members, who can also apply to the Settlement Scheme) will be adequately informed and subsequently will apply successfully before the deadline. There are particular concerns about [groups at risk](#), such as the elderly, people with disabilities, [children in care](#), and other types of EU citizens who may have reduced access to quality information about their rights, and may face more difficulties in applying to the Settlement Scheme.

Aside from the deadline, there are also differences in the actual rights EU citizens would have, depending on the Brexit outcome. While the UK government's [paper](#) on citizens' rights in the event of 'no deal' states that EU citizens and their family members living in the UK 'are welcome to stay', and that 'an approach based in the Withdrawal Agreement' will be adopted (by continuing the EU Settlement application system), not everything will remain unchanged. Family reunion rights and rights of appeal are particularly relevant in this context. To briefly illustrate the latter, there are currently no agreed rights to appeal under a 'no deal' situation, if an EU citizen challenges a decision made through the EU Settlement Scheme (judicial or administrative review), and no international oversight.

Finally, there are some rights that are still under negotiation. A key example is voting rights. Non-UK EU citizens currently have the right to vote in local government and European parliamentary elections, and in devolved legislatures (e.g. the Welsh Assembly). Voting rights are now being negotiated bilaterally, instead of being part of the citizens' rights 'package'. To date, Spain, Portugal and Luxembourg [have agreed](#) on reciprocal voting rights for British citizens living in those countries, and therefore Spanish, Portuguese and Luxembourgish citizens in the UK will continue to enjoy their voting rights. However, we may end up with a situation where, for instance, Spanish citizens will continue to vote in UK local elections, while another EU citizen national group will not be able to do so. This could create an unequal and unfair situation for people who were promised they could continue to live their lives 'as before'.

While one could write an entire PhD thesis on the citizens' rights negotiations, this topic is often simplified to mere soundbites of the type 'EU citizens are welcome to stay'. Boris Johnson was one of the first politicians to commit to 'automatic grant' of rights for EU citizens in 2016, and promised [to pass laws](#) to give certainty to EU citizens during his campaign for Conservative Party leadership. In his first Commons statement, he [repeated](#) 'unequivocally our guarantee to the 3.2 million EU nationals now living and working in the UK.' However, a few hours later, the government [dismissed](#) the prospect of new legislation on citizens' rights before 31 October.

While there have been many changes in UK politics recently, nothing has really changed for citizens' rights. EU citizens in the UK and British citizens in the EU hear the same promises from politicians, while continuing to live in limbo since 24 June 2016.

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*This article gives the views of the author, not the position of Democratic Audit.*

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### About the author



**Alexandra Bulat** is a final year ESRC-funded PhD candidate at the School of Slavonic and East European Studies (SSEES), University College London (UCL). Her academic research focuses on attitudes towards EU migrants in two local authority areas in England – Newham and Tendring. Alexandra has been an advocate of EU migrants' rights since 2016 and is currently the chair of Young Europeans, part of the EU citizens' rights organisation the3million. Alexandra tweets on migration and citizens' rights [@alexandrabulat](https://twitter.com/alexandrabulat).

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