

# Breaking up families is easy to do: family reunification post-Brexit

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2017-6-13

*Will EU citizens living in the UK be able to keep the rights they have enjoyed up to now? Or will the UK's unusually harsh family reunification laws apply to them? **Katya Ivanova** (left) and **Georgiana Turculet** predict that the Brexit negotiations will reignite domestic debates around citizens' core family rights. The authors outline four possible outcomes of the negotiations. They argue that the fourth scenario – the adoption of EU law as the UK's national law – is the most politically sustainable and morally desirable solution.*



Last month the Dutch national Monique Hawkins, who made [headlines](#) after the initial rejection of her permanent residency application, was granted UK citizenship. But securing her status to live and work in the UK irrespective of the outcome of Brexit negotiations has come at a price. Hawkins may have relinquished several rights conferred to her under the EU freedom of movement laws, including the right to bring family to live with her without undergoing the arduous, complex and expensive process UK citizens who want to bring non-EU family to the UK must undergo.



Hawkins' case exposes the particular harshness of UK's family reunification system when set aside those of other EU states. There, the family core rights of a country's own citizens married to third-country nationals are generally respected. Non-citizens, on the other hand, often have to wait longer and face extra checks (e.g. proof of income and proof of status) before they can bring in family members. This difference in family reunification requirements is justified by the weighty importance of citizenship, which eventually confers citizenship on their spouse and children.



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The UK is unique in applying exceptionally harsh family reunification standards towards its own citizens. British citizens are treated much the same way non-EU immigrants are in other EU countries, with the UK legal framework imposing restrictions typically reserved for third country nationals. To bring a non-EU/EEA spouse to the country, UK

citizens must meet a minimum annual income requirement of £18,600, and the spouse has to pass an English language test. The minimum income threshold rises depending on the number of dependents. The current cost for a spouse visa, which stands [at nearly £7,000](#), can be prohibitively expensive for many people.

[A 2015 international comparison](#) of family income policies demonstrates that the UK has the least generous policies on family unification among 38 high-income countries. [A 2016 report](#) by the Migration Observatory at the University of Oxford estimates that over 40% of British citizens are unable to meet the income threshold requirement, with the share rising to 51% and 57% for spouses with one child and those with two children respectively. Young workers, especially young female workers, and those without higher education are least likely to meet the income threshold.

**Paradoxically, under the status quo the EU provides a buffer against UK's harsh family unification law, guaranteeing more rights to EU citizens than the UK grants its own citizens.** A UK citizen married to an EU citizen falls within the EU's freedom of movement legal standards and enjoys family rights that allow her spouse to live and work in the UK without having to comply with any of UK's family immigration rules. Conversely, a UK citizen married to a third-country spouse falls outside the EU buffer, and the harsher UK law applies to her and her family with full force. The danger that Brexit presents lies in the possibility of expanding the definition of third country nationals to EU citizens, which would strip them of their family rights guaranteed under EU freedom of movement laws.

In effect, Brexit may make an already strict family reunification law much worse. The presence of an estimated three million EU citizens in the UK will put families under further strain. Many EU citizens will have formed civil unions and partnerships with UK citizens, other EU citizens and with non-EU citizens while living there. Therefore, when considering spouses, children and other dependents, the number of people who may fall out of EU protection will most likely be significantly higher than the three million figure.

In light of these developments, we outline four possible outcomes of the Brexit negotiations and argue that the fourth outcome is the most politically sustainable, morally desirable and consistent with a liberal democratic citizenship regime.

## Scenario 1

Keep the status quo – EU citizens living in the UK before the triggering of Article 50 will retain all rights conferred upon them by EU law. This is the opening negotiating position of the EU per chief Brexit negotiator, Michel Barnier, and supported by the EU Parliament.

The proposal to maintain EU family law side by side with UK law, assuming the two laws are consistent from a legal standpoint, stems from the vital need to ensure the basic values that healthy liberal democracies stand for. The moral principle behind this proposal is that some rights are inalienable and cannot be up for political bargaining. Fundamental interests such as family rights persist in the face of new governments or international agreements. They are protected under the [Universal Declaration of Human Rights](#), the [European Convention on Human Rights](#) and national constitutions (and their equivalents) precisely to highlight their inalienable nature and to ensure that some rights function beyond short-term political interests. As such, they are non-negotiable.

If the EU law under which families were formed (see the definition of 'EU families' at the end of this post) was removed or altered, the consequences would damage the UK's reputation as an open, cosmopolitan nation. EU families (or some of their members) would be vulnerable to expulsions, separations and loss of permanent residency status, as [recent data](#) shows.

The major difficulty with this proposal rests with the justification itself. Whilst the proposal to ensure fundamental rights to current EU citizens by maintaining the current EU law is backed up by the very nature of these rights, it will be very hard to justify maintaining two sets of laws post-Brexit: a 'harsher' law for UK citizens and a 'family-friendlier' one for EU citizens who will unite in the future. Maintaining two separate bodies of law applying to two distinct

categories of people in the same jurisdiction seems ill-suited to contemporary liberal democracies. UK citizens forming unions with third-country citizens will face much harsher conditions than EU citizens would. This will create a situation which would contradict the very notion of the nation state— which generally guarantees citizens’ interests over those of outsiders – by applying a more demanding law against its own citizens than against EU citizens.

Realistically, such a double standard would only be justifiable during the Brexit transition to avoid mass expulsions and other mass violations of family rights, but not for families formed post-Brexit.

## Scenario 2

Extend UK family immigration rules to EU citizens and their immediate family.

The UK’s current family migration rules mean that spouses sometimes cannot be united with their UK counterparts for long periods, and the law affects poorer citizens more than rich ones – conflicting with the fundamental right to form intimate relationships regardless of one’s income. It is unlikely that EU negotiators will accept this arrangement. It could result in social catastrophe for the three million EU citizens living in the UK. Furthermore, it is immoral and perhaps unlawful to apply a new law retroactively to couples who have already formed and established their permanent home in the UK under EU auspices, and thus to inflict costly burdens on these families. Even if someone were ready to leave the UK given the new political situation, she may have her children in school, may have bought a house or have any number of other arrangements or obligations that would make it difficult to depart within a deadline imposed by the Home Office. The UK law seems likely to only apply post-Brexit to future families rather than those already formed.

## Scenario 3

Come up with a compromise – rules are not to be extended to family members of EU citizens already living in the UK, but UK national law will apply to EU citizens settled in the UK pre-Brexit who want to bring family members post-Brexit.

This scenario seems more viable, as its consequences for existing families are less severe. Yet even if the consequences are less harsh, violating the union and welfare of families is still a categorical breach of fundamental rights. It is plausible that families who already live in the UK will immediately ensure family members can join them before the new law would be enforced. In principle, families could reorganise their lives before the new law came into force.

Yet denying easy social interaction between British and EU citizens would be counterintuitive. Many Europeans consider themselves part of a European people. Brexit shows that some reject this notion. The political elites who object to this idea, which has penetrated so many people’s daily lives, would have to renew a form of nationalism similar to that of the Westphalian states. From a historical perspective, this sets the course back towards much darker and more tumultuous waters.

## Scenario 4

This is the ideal scenario: the UK revises its family law altogether. It abolishes the current UK law. It keeps and adopts EU family law to apply to *everyone*, including UK citizens.

The current UK family law hurts UK citizens. It is a moral imperative to review it, given that family formation and welfare is a universal basic right at the heart of liberal democracies. While the EU law offers a more humane alternative to the UK counterpart, Brexit provides a political opportunity to revise the current UK law and adopt EU standards. Keeping the EU law in the UK may be the only way to avoid a social catastrophe, and also a chance to help UK citizens who struggle to meet the financial demands. It would advance the fundamental interests of constituents and residents within the UK jurisdiction. As such, this solution is the most feasible politically, and

consistent with the British liberal democratic regime.

We need a humane, diplomatic approach in the upcoming negotiations. Preserving the rights of EU citizens in the UK and vice versa post-Brexit should be a straightforward and easy part of the negotiation process, considering that public opinion and even the 'hard Brexit' media favour a humane approach. If Theresa May's government adopts a hardline approach that tries to strip away the rights of EU citizens, it will have a very adverse effect on the forthcoming negotiations and the opportunity to secure an acceptable trade deal. It may also erode some of the domestic public popularity May currently enjoys. Most importantly, it would have disastrous consequences for families.

## **Notes**

*EU families are those civil unions (marriages, same sex unions) in which at least one member of the family is a national of one EU member state and formed a union with another EU citizen, or a third country national, or a UK citizen. If the EU law does not apply anymore, as in the status quo, the UK remaining set of laws, will regulate the existing unions, all of which presently are much harsher.*

*This post represents the views of the authors and not those of the Brexit blog, nor the LSE.*

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