



BRIEFING PAPER

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Family visa requirements: future changes affecting British citizens in the EU

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Summary

The UK-EU Withdrawal Agreement doesn't preserve the rights of British citizens living in the EU before the end of the transition period to return to the UK with their non-British family members under EU free movement law.

Existing family members of British citizens currently living in the EU are therefore due to come within the scope of the UK's family visa rules (including the 'minimum income requirement'). The Government says that these changes won't take effect until 30 March 2022, so that families have time to plan accordingly.

Campaigners worry that some families will be unable to satisfy the UK's visa requirements. A non-government amendment to the *Immigration and Social Security Co-ordination (EU Withdrawal) Bill*, approved at Lords Report stage, would give this group of British citizens a lifetime right to return to the UK with close family members under the current terms.

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1. The current position: visa requirements for British citizens' family members

Currently, visa requirements for non-British family members of British citizens living overseas depend on where in the world the British citizen lives, and the nationality of their family members (e.g. spouse/civil partner).

EU national family members can come to the UK in their own right, under EU free movement of people law.

A non-EU national partner of a British citizen living in an EU Member State can also use EU free movement law if the family wish to return to live in the UK. This is because European caselaw (particularly, the '[Surinder Singh case](#)') established that when EU citizens (and their family members) exercise a right to move to another Member State under EU law, their right to return to their country of nationality also comes under EU law.¹

In contrast, non-EU national family members of British citizens living in the UK or a non-EU state are subject to the [visa requirements](#) set out in the UK's Immigration Rules. These also apply to the family members of non-British people settled in the UK.

This is because, subject to the Surinder Singh provisions, EU membership has not prevented individual Member States from setting their own national visa requirements for their citizens' non-EU national family members. The requirements, and extent to which they diverge from comparable provisions in EU free movement law, vary between States.

1.1 What is the 'minimum income requirement'?

Since 2012, the UK's eligibility criteria for a spouse/partner visa have included a financial requirement. It is commonly referred to as the 'minimum income requirement'. The visa applicant must demonstrate available maintenance funds equivalent to a minimum gross annual income of £18,600. A higher amount is required when visas are also sought for non-EEA national children.

The Immigration Rules are [very prescriptive](#) about what sources of income and funding are acceptable. For example, the visa applicant's employment income can only be considered if they are already in the UK with permission to work. Furthermore, the sponsoring (e.g. British) partner's overseas employment is not acceptable on its own – the sponsor must also have a confirmed job offer in the UK. Certain non-employment sources of income can be used to satisfy the requirement, subject to conditions. For example, an applicant/their sponsor would need to show £62,500 in cash savings if they aren't also relying on any of the other permissible income sources to satisfy the requirement.

The financial requirement must be met each time the migrant applies for temporary leave to remain as a family member, and when they become eligible to apply for Indefinite Leave to Remain (usually after five years).

It is acknowledged that in some cases, the financial requirement represents a significant and possibly permanent obstacle to a couple living together in the UK, and that some demographic groups are particularly affected due to differences in earnings.

¹ For simplicity this briefing refers to 'EU' countries and nationals. But the issues discussed also apply to British citizens living in Switzerland or an EEA state and their Swiss/EEA national family members.

Commons Library briefing 6724, [The financial \(minimum income\) requirement](#) (7 November 2017) considers the policy in greater detail.

Comparable provisions in EU free movement law do not specify a minimum income or specific level of resources that the EU national must have for their non-EU family member to join them in the host Member State.

For at least as long as the minimum income requirement has been in place, some stakeholders [have highlighted the inconsistency](#) between the requirements in UK and EU law as an example of unfairness/'reverse discrimination' against British citizens. Some have argued that this is due to UK Government policy (since the UK's rules could have been brought into line with the comparable provisions in EU law), whereas [others have suggested](#) that the UK should have had the freedom to apply a similar income requirement to EEA nationals bringing family members to the UK.

2. Brexit: Changes affecting British citizens living in the EU

Although the Citizens' Rights section of the UK-EU Withdrawal Agreement seeks to broadly protect the current rights of British citizens living in the EU/EEA (and vice versa), it does not cover 'Surinder Singh' rights, which have previously given their family members a legal route of entry to the UK outside of the UK's Immigration Rules.

Consequently, existing non-British family members of British citizens living in the EU will come within the scope of the UK's family visa requirements after the end of the transition period (although, as discussed below, the Government does not intend to make this change until late March 2022).

2.1 No changes before 29 March 2022

In April 2019, the then Government confirmed that the visa eligibility requirements for people who were a 'close family member' of a British national living in the EU on 'exit day' (31 January 2020) would not change before 29 March 2022.

Close family members of British citizens moving to the UK before then will not need a family visa under the UK's Immigration Rules (although they will need to apply for immigration status under the EU Settlement Scheme):

11. We understand that UK nationals are concerned about their right to return from the EU with their EU or non-EU national family members after exit. Having listened to these concerns, we will ensure that UK nationals, their children and other existing close family members can return to the UK under current rules, until 29 March 2022. This means that existing close family members, such as children, spouses, partners, parents and grandparents, where the relationship existed on exit day (or where a child was born overseas after this date) and continues to exist when they seek to return will be able to apply to and qualify for the EU Settlement Scheme. After 29 March 2022, such family members will be able to return to the UK by applying through the applicable UK Immigration Rules. (DExEU, [Citizens' Rights – UK nationals in the EU Policy Paper](#), 4 April 2019)

Statement of changes to the Immigration Rules [HC 2631](#), laid in September 2019, updated the Immigration Rules accordingly.

3. Pressure for a change of policy

3.1 What are the concerns?

Campaigners including [British in Europe](#) (a coalition of grassroots citizens organisations representing British citizens living in the EU) argue that British citizens living in the EU before the end of the transition period should be given a lifetime protection of their existing rights to return to the UK with their close family members.

They are worried that some families will effectively lose the option of returning to the UK after 29 March 2022, if they are unable to satisfy the minimum income requirement (or other aspects of the family visa requirements):

When we moved to the EU/EEA we did so expecting to keep our rights for life and, if necessary, to return to Britain with our non-UK families. Our loss of this right could make it impossible, for those of us with family members of a different nationality, to go back to look after elderly parents - unless we are prepared to live apart from our partners. While Britons, legally resident in the EU before the end of the transition period, will face these restrictions, EU citizens who have moved to the UK before 1 January 2021 will not. Under the Withdrawal Agreement they can bring existing family members to the UK for life, as well as keeping their right to return to their country of birth with the families they have made in their new homes. The perverse result is that the UK government's approach will discriminate against its own citizens.

3.2 Amendment to the *Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2019-21*

At Lords Report stage of the [Immigration and Social Security Co-ordination \(EU Withdrawal\) Bill](#), Peers voted for an amendment to retain the rights of British citizens living in the EU before the end of the transition period to return to the UK with their non-British close family members under EU free movement of people terms. It was a non-government amendment (Amendment 11, **now reflected by clause 5(6)** of [HL Bill 137](#), as amended on Report), sponsored by Baroness Hamwee (Lab). [It was agreed by 312 votes to 223](#).

The issue had also been raised in both Houses at earlier stages of the Bill. The Conservative Peer Lord Flight had sponsored the amendment in Lords Public Bill Committee.

Arguments for and against the amendment: discrimination or fairness?

Arguments for and against the amendment were most recently aired during the Bill's [Lords Committee](#) and [Report](#) stages.

The Government and its critics both assert their positions by referring to fairness and discrimination but make different comparisons to do so.

Arguments that the Government is discriminating against its own citizens focus on the different rights given to British citizens living in the EU and EU citizens living in the UK. Existing close family members of EU citizens living in the UK before the end of this year have a lifetime exemption from the UK's family visa requirements (provided for by the Withdrawal Agreement), but British citizens currently living in the EU do not.

The Government contends that this isn't discriminatory. It points to the fact that British citizens living in the EU before the end of the transition period have identical rights under

the Withdrawal Agreement. These ensure their ability to be joined by non-EU family members in the host Member State rather than in the UK.

The Government argues that it would be unfair to also give British citizens living in the EU a lifetime right to return to the UK with their close family members under EU law terms. It explains its rationale by comparing their position with a different group of people - British citizens living in the UK or in a non-EU state, whose family members are already subject to the UK's Immigration Rules:

Such preferential treatment is unfair and cannot be justified in relation to the family reunion rights of UK nationals outside of EU law. The rights for those affected by the end of free movement should, after a reasonable period to plan accordingly, which our policy provides, be aligned with those of other UK nationals who have always resided in the UK or who seek to bring family members to the UK after a period of residence in a non-EEA country. To do otherwise would perpetuate a manifestly unfair situation for all other UK nationals wishing to live in the UK with family members from other countries. ([HL Deb 5 October 2020 c257-8](#))

The Government's approach has been criticised for effectively '[levelling down](#)' rights.

As British in Europe have highlighted, under the Government's preferred approach, after 29 March 2022 there will still be a group of people who have more generous rights to bring family members to the UK than British citizens and other long-term residents.

The Government also rejects the contention that it is imposing retrospective changes on British citizens, by pointing out that it is giving almost three years' notice of the changes. Ministers have also emphasised that British citizens will still be able to return to the UK after 29 March 2022 with their families, provided that they can satisfy the visa requirements.

Campaigners maintain, however, that giving British citizens living in the EU the same lifetime protection that EU nationals resident in the UK have would provide peace of mind to a finite number of British citizens, not all of whom are likely to move back to the UK in any case.