

**Research Briefing**

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# UK-EU Withdrawal Agreement: Implementation of citizens' rights



## Summary

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## Summary

This briefing provides an overview of implementation by the UK and EU Member States of the Citizens' Rights provisions of the Withdrawal Agreement. These provide for continuing residence rights for UK citizens living in the EU, and EU citizens living in the UK, following the UK's exit from the EU.

## The Withdrawal Agreement

Part Two of the UK-EU Withdrawal Agreement (WA) protects the post-Brexit residence rights of EU citizens living in the UK and British citizens living in the EU. It covers people who took up residence before the end of the transition period (31 December 2020).

The Withdrawal Agreement permits either 'declaratory' or 'constitutive' systems for verifying a person's protected rights. A declaratory system recognises the rights of eligible citizens by automatic operation of law, whereas a constitutive system requires those eligible to apply for recognition.

The deadline for applications had passed in every country operating a constitutive system by the end of 2021, including the UK, although late applications are still possible if there are "reasonable grounds". Denmark later extended its deadline until the end of 2023.

## The EU Settlement Scheme in the UK

The UK adopted a constitutive system called the EU Settlement Scheme. As of 30 June 2023, 6.2 million people had applied. This exceeded initial expectations, although the number of people who were potentially eligible remains unknown.

To date, there have not been widespread reports of many people experiencing hardship through loss of immigration status after failing to apply by the June 2021 deadline. But the UK has recently tightened the criteria for making late applications, and campaigners continue to raise other issues with the scheme. These include the lack of a physical residence document to prove status once obtained.

The High Court has also ruled that the scheme was operating unlawfully because it envisaged removing some people's residence rights if they failed to apply twice. The UK is making changes to the scheme to comply with this judgment.

## British citizens in EU Member States

The following Member States adopted a declaratory system, granting residence rights automatically to British citizens lawfully resident on their territory at the end of December 2020:

- Bulgaria; the Czech Republic; Germany; Estonia; Ireland; Greece; Spain; Croatia; Italy; Cyprus; Lithuania; Poland; Portugal; and Slovakia.

In some cases, British citizens were still required, as an administrative formality, to register with national authorities and apply for a new residence document in order to certify their new residence status.

The following Member States adopted a constitutive system, meaning British citizens resident at the end of December 2020 needed to apply for a new residence status:

- Belgium; Denmark; France; Latvia; Luxembourg; Hungary; Malta; The Netherlands; Austria; Romania; Slovenia; Finland; and Sweden.

The latest data published by [the UK-EU Specialised Committee on Citizens' Rights](#) established under the WA showed that by the end of 2021, 98% of the estimated 290,000 British citizens resident in constitutive Member States had applied for a new residence status. There were also an estimated 800,000 British citizens in Member States operating declaratory residence systems, with around a third having applied for a new residence document.

British citizens living in EU Member States, and organisations representing them, have raised concerns about difficulties faced in confirming their rights under the WA. These have included concerns about how requirements have been communicated and slow delivery of processes in some Member States, and problems accessing appeal processes where residence applications have been rejected in constitutive systems. In declaratory systems, concerns have been raised about how British citizens are expected to provide evidence of their status (in the absence of the need to apply for a new residence status) and the impact this has on accessing services and other entitlements for residents in the host Member State. Some of these issues were raised by the UK Government and UK Embassies and were addressed by Member States by the end of 2022.

Other issues continue to be raised by groups representing British citizens in 2023, notably by the British in Europe (BiE) voluntary organisation. These include continuing problems with the issuing of new residence cards in Portugal and increasing numbers of refusals of applications in some constitutive countries, including in Sweden and Denmark. In Denmark the deadline for applications was extended after a local campaign and representations by the UK Government. Other problems highlighted in Member States include family reunification and a lack of clarity in some

Member States as to the status of children of British citizens and whether they are required to have residence documentation.

The ongoing issues were highlighted by BiE in evidence sessions with the House of Lords European Affairs Committee in 2023 and were raised in correspondence between the Committee and the Home Secretary. The ending of UK Government funding to organisations supporting British citizens in the EU to secure their rights under the WA was also highlighted. The Government has said it is continuing to raise issues related to the implementation of the Citizens' Rights provisions with the European Commission, and bilaterally with Member States. It has also raised these concerns in the joint UK-EU committees established by the WA.

While the Independent Monitoring Authority has been established in the UK to monitor the UK's implementation of its Citizens' Rights obligations under the WA, the European Commission performs this role on behalf of EU Member States in respect of British citizens living in the EU. However, concerns have been raised that the European Commission is not resourced to perform this role and that it cannot resolve issues raised by British citizens in the EU about the implementation of their WA rights in the same way as the Independent Monitoring Authority does for EU citizens in the UK.

The Commission provides guidance to Member States on implementation of the WA Citizens' Rights provisions and engages with Member States and groups representing British citizens where there are issues with implementation. Complaints over WA implementation can be made to the European Commission, using the standard complaint procedure for any breaches of EU law. The European Commission's annual report on implementation of the WA Part Two provisions published in November 2022 provided data on complaints received relating to implementation of these provisions in the Member States in 2021.

## The Parliamentary Partnership Assembly

This briefing was originally prepared for a breakout session at the second meeting of the [UK-EU Parliamentary Partnership Assembly \(PPA\)](#), held in the UK Parliament on 7-8 November 2022. It has been updated for a breakout session at the fourth meeting of the PPA (and second UK-hosted meeting) held in the UK Parliament on 4-5 December 2023.

The PPA was [established under the UK-EU Trade and Cooperation Agreement](#) and includes [members of the UK Parliament \(MPs and Peers\)](#) and [Members of the European Parliament](#).



# 1 Background: The Withdrawal Agreement

## 1.1 The UK-EU agreements and Citizens' Rights

The Withdrawal Agreement (WA) between the United Kingdom and European Union, which came into force when the UK left the EU on 31 January 2020, covers “Citizens’ Rights”.<sup>1</sup>

Part Two of the WA protects rights of residence in the host state (the UK for EU citizens, and individual EU Member states for British citizens) for citizens who were exercising free movement rights up to the end of the Brexit transition period (31 December 2020).<sup>2</sup>

The separate treaty covering UK-EU relations post-Brexit, the December 2020 [Trade and Cooperation Agreement](#), contains some limited provisions to facilitate business travel.<sup>3</sup>

Brexit has not changed the visa and immigration requirements for British citizens travelling to Ireland (and vice versa). This is because the Withdrawal and Trade and Cooperation Agreements are without prejudice to the [Common Travel Area](#) linking the UK, Ireland, Channel Islands and Isle of Man. In this briefing, therefore, references to visa requirements for travel to the ‘EU’ and Member States do not apply to Ireland.

Similar Citizens’ Rights agreements are in place for the non-EU European Economic Area states of Norway, Iceland and Liechtenstein, and for Switzerland.<sup>4</sup> This briefing refers to “EU citizens” as a shorthand for “EU, EEA and Swiss citizens”.

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<sup>1</sup> Department for Exiting the European Union, [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#), 19 October 2019.

<sup>2</sup> As above, articles 9-39. See also Section 3 of House of Commons Library briefing 8453, [The UK’s EU Withdrawal Agreement](#). Note this briefing covers the earlier version of the Withdrawal Agreement, agreed by the EU and Theresa May’s Government in November 2019. However, Part Two of the Agreement remained unchanged in the latter version concluded by the UK and EU (the only part of the Agreement that did change was the Protocol on Ireland/Northern Ireland).

<sup>3</sup> Foreign, Commonwealth and Development Office, [UK/EU and EAEC: Trade and Cooperation Agreement](#), CP 426, 30 December 2021, articles 140-145. See House of Commons Library briefing 9130, [UK-EU Trade and Cooperation Agreement: temporary business travel](#) for an overview of these provisions.

<sup>4</sup> Department for Exiting the European Union, [EEA EFTA separation agreement](#), 20 December 2018; [Swiss citizens’ rights agreement](#), 20 December 2018.

## 1.2 Limitations of the Withdrawal Agreement

The Citizens' Rights provisions in the WA set out a framework for the continued legal residence (and associated rights, including social security and healthcare rights) of EU citizens living in the UK, and British citizens living in the EU, before the end of the transition period on 31 December 2020. Individuals can rely on the WA directly to assert their rights.

To the disappointment of some British citizens living abroad, the protections in the Withdrawal Agreement only apply in the person's country of residence. The WA does not give the protected cohort of British citizens onward free movement rights throughout the rest of the EU. Rather, they are subject to the same visa requirements as other British citizens if attempting to move from their country of residence to another EU country.

As with other British citizens, British residents of EU Member States [can also travel visa-free to other EU/Schengen area Member States](#) for short stays, but these are limited to 90 days within any 180 day period. Like other non-EU nationals legally resident in a [Schengen area](#) country<sup>5</sup>, Schengen rules require that British citizens resident in an EU Member State must have a residence document and a valid travel document (such as a passport) for travel to another Schengen area country for a short stay.<sup>6</sup>

For further information, see House of Commons Library briefing, [After Brexit: Visiting, working, and living in the EU](#).

## 1.3 'Constitutive' or 'declaratory' systems

The Withdrawal Agreement permits either 'declaratory' or 'constitutive' systems for verifying a person's protected rights.<sup>7</sup> A declaratory system recognises the rights of eligible citizens by automatic operation of law, whereas a constitutive system requires those eligible to apply for recognition.

The UK's system, the EU Settlement Scheme, is constitutive. Those eligible must apply to the scheme to secure Withdrawal Agreement protections.

The schemes that apply to British citizens living in the EU are designed and implemented by the individual Member States. Some have also adopted constitutive systems, whereas others have adopted declaratory systems.

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<sup>5</sup> The [Schengen area](#) covers 22 EU Member States, plus Iceland, Norway, Switzerland and Liechtenstein.

<sup>6</sup> [Regulation \(EU\) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders \(Schengen Borders Code\)](#)

<sup>7</sup> Department for Exiting the European Union, [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#), 19 October 2019, article 18



## 2

# The EU Settlement Scheme in the UK

The UK Government set up the EU Settlement Scheme (EUSS) to provide continuity of lawful residence after the end of the transition period for people covered by the Withdrawal Agreement. The main categories of people who needed to apply were:

- EU citizens (excluding Irish);
- Family members of EU citizens who are not themselves British or EU citizens.

Successful applicants were either granted 'settled status' (equivalent to indefinite leave to remain) or 'pre-settled status' (permission to stay in the UK for five years). Once the person has completed five years' continuous lawful residence, they can re-apply to move from pre-settled to settled status. The UK Government had taken the position that people who failed to upgrade from pre-settled status before it expired would be in the UK unlawfully, but the High Court has since held that the residence rights associated with pre-settled status do not expire.<sup>8</sup>

The EUSS began as a pilot in August 2018 and fully opened on 30 March 2019.<sup>9</sup> The main application deadline was 30 June 2021. The scheme remains open to process late applications (still possible in limited circumstances) and applications to upgrade to settled status.

As per the Withdrawal Agreement, an [Independent Monitoring Authority for the Citizens' Rights Agreements](#) (IMA) was established to monitor the UK's implementation of its obligations.

## 2.1

# Applying to the EU Settlement Scheme

In most cases, applying to the EUSS was a light touch process. Applicants were required to satisfy three basic requirements: verifying their identity; demonstrating their length of UK residence; and satisfying suitability requirements concerning character and criminal conduct. Many people could apply entirely online, by scanning their identity documents using a mobile phone app and then filling out a form on GOV.UK.

<sup>8</sup> *R (Independent Monitoring Authority for the Citizens' Rights Agreements) v Secretary of State for the Home Department* [2022] EWHC 3274 (Admin), 21 December 2022

<sup>9</sup> Home Office, [NHS workers and students to trial EU Settlement Scheme](#), 20 July 2018

The Home Office said that its general approach to EUSS casework was to look to approve applications rather than for reasons to refuse.<sup>10</sup> Most applications have been successful. Almost 88% of concluded outcomes were a grant of settled or pre-settled status.<sup>11</sup> People could re-apply if unsuccessful, so refusals did not necessarily lead to a loss of status.<sup>12</sup>

## Uptake

As of 30 June 2023, 6.2 million people had applied to the EUSS.<sup>13</sup> This exceeded initial expectations. A report for the UK in a Changing Europe research network described the scheme as “hugely successful” overall.<sup>14</sup>

However, there has always been considerable uncertainty over the number of people who would need to apply. That is because there was no register of people previously living in the UK with rights under EU law, only estimates. As Madeleine Sumption of Oxford University’s Migration Observatory put it, “the number of eligible applicants is simply not known”.<sup>15</sup> This also means that the number of people who failed to apply was, and remains, unknown.

## Late applications

Article 18(1)(d) of the Withdrawal Agreement allows applications after the deadline if there are “reasonable grounds” for missing it.

The criteria for having a late application accepted were not strict. Home Office guidance instructed officials to take a “flexible and pragmatic” approach to whether there were reasonable grounds.<sup>16</sup> Simply being unaware of the need to apply could qualify.<sup>17</sup>

In the two years since the main deadline expired on 30 June 2021, there were 505,000 late applications. Of those, 441,000 have been concluded. Over 40% (184,000) resulted in a grant of pre-settled or settled status. 208,000 were refused, while 49,000 were void, withdrawn or invalid.<sup>18</sup>

The Home Office significantly tightened the criteria for late applications from mid-2023.<sup>19</sup>

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<sup>10</sup> For example, [HC Deb 7 July 2021 c984](#)

<sup>11</sup> Home Office, [EU Settlement Scheme quarterly statistics, June 2023](#), tab EUSS\_03\_UK

<sup>12</sup> Free Movement, [How accurate are EU Settlement Scheme decisions?](#), 20 July 2022

<sup>13</sup> Home Office, [EU Settlement Scheme quarterly statistics, June 2023](#), tab EUSS\_RA\_01

<sup>14</sup> UK in a Changing Europe, [The EU Settlement Scheme](#), 16 June 2021

<sup>15</sup> Migration Observatory at the University of Oxford, [Not Settled Yet? Understanding the EU Settlement Scheme using the Available Data](#), 16 April 2020

<sup>16</sup> Home Office, [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#), version 19.0, 12 April 2023, p33

<sup>17</sup> As above, p44

<sup>18</sup> Home Office, [EU Settlement Scheme quarterly statistics, June 2023](#), tab EUSS\_POST\_30\_JUNE

<sup>19</sup> DEP2023-0609 ([Reforms to the EU Settlement Scheme](#)), 19 July 2023; Free Movement, [Important changes to the way late EUSS applications are treated](#), 13 November 2023

## 2.2

## Issues with the EU Settlement Scheme

### The need to apply at all

Campaigning organisations representing EU citizens in the UK, and others, argued that a declaratory system (that is, automatic residence rights) would have been better.

There were concerns, for example, that vulnerable and marginalised groups would be at risk of losing their right to live in the UK due to lack of awareness of the EUSS or difficulties navigating the digital application process. Vulnerable groups identified included the elderly, people with limited English, children in care, homeless people, those who arrived soon before the deadline and people in casual employment.

To date, there have not been widespread reports of large numbers of people experiencing hardship through loss of immigration status after failing to apply by 30 June 2021. People found by the authorities to be without status in circumstances where they may be eligible for the EUSS are given 28 days to lodge a late application.<sup>20</sup> Lawyers report that “in practice the Home Office did not refuse applications solely because they were made late”.<sup>21</sup>

As mentioned above, the criteria for accepting late applications have been tightened relatively recently. This may lead to situations where people are refused EUSS status for failure to apply in time, where previously the lenient approach to late applications provided a safety net.

Successive UK Governments resisted calls for a declaratory approach. Ministers argued that the requirement to apply ensures that people have evidence of their lawful status.

### No physical documents to prove status

People granted EUSS status are usually only provided with digital proof of status, rather than a physical immigration document. This is another long-running area of concern for some campaigners.

There are reports of digital status not being retrievable from the online system or not being recognised by third parties who need to verify it.<sup>22</sup> A House of Lords committee concluded that such difficulties risk undermining

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<sup>20</sup> Home Office, [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#), version 17.0, 13 April 2022, p37

<sup>21</sup> Free Movement, [Important changes to the way late EUSS applications are treated](#), 13 November 2023

<sup>22</sup> For example, Free Movement, [A glitch or a feature? Systemic problems with digital proof of immigration status](#), 31 July 2023; Foreign, Commonwealth & Development Office, [Citizens' Rights Specialised Committee meeting, 15 June 2022: joint statement](#), 20 June 2022; the3million, [Phiane's story](#), 21 January 2022

the scheme's "considerable success". It recommended that people have the option of a physical document as a back-up.<sup>23</sup>

In May 2021, the High Court rejected a legal challenge to the policy of digital-only status as "premature".<sup>24</sup>

Successive Governments have rejected attempts to allow for physical status documents to be provided to holders upon request. They say, for example, that digital status documents are more secure and convenient.<sup>25</sup> The digital-only policy also reflects broader moves to digitise the immigration and border system.<sup>26</sup>

## The approach to pre-settled status

The UK Government had envisaged that pre-settled status would expire after five years if the person did not make a second application to upgrade it to settled status. This aligned the EUSS with the wider UK immigration system, in which visas expire unless the holder applies for an extension or settlement. EU citizens with pre-settled status who failed to apply a second time would be considered unlawfully resident.

There were concerns that some EU citizens might fail to upgrade their pre-settled status on time.<sup>27</sup> The UK Government said that it would send individual reminders.<sup>28</sup>

The IMA, as statutory watchdog for EU Citizens' Rights, felt that this approach was in breach of the Withdrawal Agreement. It brought a legal challenge to the High Court, which gave judgment in December 2020.<sup>29</sup>

Mr Justice Lane found in favour of the IMA and granted a declaration that the EUSS was operating unlawfully.<sup>30</sup> He held that Withdrawal Agreement residence rights, once acquired, cannot expire: "absent a change in circumstances, protection under the WA is life-long".<sup>31</sup>

<sup>23</sup> European Affairs Committee, [Citizens' Rights](#), 23 July 2021, HL 46 2021-22, paras 157-160

<sup>24</sup> *R (The 3million Ltd) v Secretary of State for the Home Department* [2021] EWHC 1159 (Admin)

<sup>25</sup> For example, [HL Deb 8 March 2022 cc1379-1382](#)

<sup>26</sup> "The general direction of immigration policy is towards a digital system": European Affairs Committee, [Citizens' Rights](#), 23 July 2021, HL 46 2021-22, para 155

<sup>27</sup> Migration Observatory at the University of Oxford, [How Secure is Pre-Settled Status for EU Citizens After Brexit?](#), 29 March 2022; European Affairs Committee, [Citizens' Rights](#), 23 July 2021, HL 46 2021-22, paras 165-177

<sup>28</sup> HM Government, [Response to the report on citizens' rights of 23 July by the European Affairs Committee \(PDF\)](#), 19 November 2021, pp16-17

<sup>29</sup> *R (Independent Monitoring Authority for the Citizens' Rights Agreements) v Secretary of State for the Home Department* [2022] EWHC 3274 (Admin), 21 December 2022

<sup>30</sup> As above, para 193

<sup>31</sup> As above, para 148

The judge went on to find that the right of permanent residence in the UK after five years arises automatically. The person could not be required to apply for settled status, as the Home Office had envisaged.<sup>32</sup>

The UK Government did not appeal. Instead it made significant changes to the EUSS. These included automatic two-year extensions of pre-settled status and automatic grants of settled status where government records show continuous residence for five years.<sup>33</sup>

Ministers say they will continue to encourage people to apply for settled status, as this is “the best way of evidencing their right of permanent residence”.<sup>34</sup> They are also “working to ensure” that people with the right of permanent residence can rely on it without applying for settled status.<sup>35</sup>

## Delays in processing applications

Campaign group the3million has highlighted what it describes as a “huge and persistent backlog” in EUSS applications.<sup>36</sup> An IMA inquiry into decision-making delays is ongoing.<sup>37</sup>

As of 30 June 2023, there were 154,000 pending applications. Almost 42,000, or 27%, had been waiting for over six months.<sup>38</sup>

Waiting times are longer for certain nationalities, particularly non-EU ones, according to the Migration Observatory. Its analysis also shows that waiting times have increased over the lifetime of the scheme.<sup>39</sup>

The advertised processing time is up to a month for routine applications, but longer if more information is required.<sup>40</sup> The UK Government says longer delays are “usually due to suitability concerns, such as pending prosecutions”. Lord Murray, a Home Office minister, emphasised that a majority of people wait less than three months and said the scheme was “very efficient”.<sup>41</sup>

## Family permits

The EU Settlement Scheme family permit is a type of visa allowing family members to join EU citizens in the UK. Decision times for issuing family permits have increased significantly, from around two months for permits issued in early 2021 to around seven months at the end of 2022.<sup>42</sup>

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<sup>32</sup> As above, para 192

<sup>33</sup> Home Office press release, [EU Settlement Scheme enhancements confirmed](#), 17 July 2023; the3million, [Updated Q&A document on the Home Office changes to the EU Settlement Scheme that implement the High Court judgment on the case brought by the IMA](#), 13 October 2023

<sup>42</sup> UK Visas and Immigration, [response to Freedom of Information request 71575](#), 17 October 2022

## Refusal decisions and benefits overpayment

People who were refused EUSS status between June 2021 and April 2022 did not have that refusal added to their digital immigration record until January 2023. Ministers said this was a deliberate decision to protect the rights of people with a pending appeal or internal review, as the system could not initially distinguish between people who had appealed and people in the UK unlawfully.<sup>43</sup>

As a result, some people were able to claim welfare benefits and NHS healthcare to which they were not entitled. The Independent Monitoring Authority said that potentially 141,000 people were in this position.<sup>44</sup>

The Home Secretary later said that only a “very small proportion” were expected to have wrongly claimed benefits or accessed public services as a result. For example, by June 2023, “fewer than 350” benefits claims had been closed. The Department of Work and Pensions would seek to recover benefits paid to people not eligible, although only for Universal Credit, of which “fewer than 160” cases had been identified.<sup>45</sup>

The EU raised “deep concerns” about this at a May 2023 meeting of the joint UK-EU Specialised Committee on Citizens’ Rights. In particular, it “expressed its disappointment” at the UK’s plan to recover overpayments.<sup>46</sup>

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<sup>35</sup> European Affairs Committee, [Letter from the Home Secretary re: Rights of EU citizens in the UK and UK citizens in the EU under the Withdrawal Agreement \(PDE\)](#), 26 October 2023, p4

<sup>36</sup> the3million, [EU Settlement Scheme statistics](#), accessed on 13 November 2023

<sup>37</sup> Independent Monitoring Authority, [IMA launches new inquiry to investigate EU Settlement Scheme application delays](#), 4 September 2023

<sup>38</sup> European Affairs Committee, [Letter from the Home Secretary re: Rights of EU citizens in the UK and UK citizens in the EU under the Withdrawal Agreement \(PDE\)](#), 26 October 2023, p5

<sup>39</sup> Migration Observatory at the University of Oxford, [Outstanding issues facing the EU Settlement Scheme](#), 18 October 2023. Non-EU citizens would be sponsored by an EU family member.

<sup>40</sup> UK Visas and Immigration, [EU Settlement Scheme: current estimated processing times for applications](#), 4 August 2023

<sup>41</sup> HL Deb 11 September 2023 c158GC

<sup>42</sup> UK Visas and Immigration, [response to Freedom of Information request 71575](#), 17 October 2022

<sup>43</sup> [HL Deb 11 September 2023 c161GC](#)

<sup>44</sup> Independent Monitoring Authority, [IMA statement on concerns over EU Settlement Scheme](#), 27 January 2023

<sup>45</sup> European Affairs Committee, [Letter from Rt Hon Suella Braverman KC MP, Home Secretary, regarding Rights of EU citizens in the UK and UK citizens in the EU under the Withdrawal Agreement \(PDE\)](#), 2 August 2023, pp9-10

<sup>46</sup> Foreign, Commonwealth & Development Office, [Citizens' Rights Specialised Committee meeting, 25 May 2023: joint statement](#), 25 May 2023

## Issues listed by the Independent Monitoring Authority

The IMA's issues log [provides a snapshot of matters it is currently monitoring or investigating](#). These include (quoting from the website):

- **Enforcement Reforms**

The IMA is considering changes being made to enforcement practices and the implication of this for citizens who have reasonable grounds for making a late application to the EUSS.

- **EUSS family permits**

The IMA has received information and complaints regarding delays with EU/EEA citizens' family members obtaining an EUSS Family Permit outcome.

- **Extra cohort**

The IMA is considering the scope of the EUSS. Specifically, the impact of the decision to extend the EUSS to persons beyond the scope of the Agreements.

- **EUSS Administrative Reviews and Appeals**

The IMA has received information and complaints about lengthy EUSS administrative reviews and an inability by applicants to obtain updated information as the review progresses.

- **EUSS – Changing from Pre-Settled Status**

The IMA is engaging the Home Office to understand changes to the EUSS to implement the recent judicial review judgment.

- **EUSS – View and Prove**

The IMA has received information and complaints regarding ongoing technical issues affecting the View and Prove service which inhibit citizens' ability to access their proof of status.

- **EUSS – UK Border Force**

The IMA has received information and complaints from citizens experiencing challenges and refusals at UK borders, relating to EUSS status.

As mentioned above, the IMA has also launched a formal inquiry into decision making delays.<sup>47</sup>

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<sup>47</sup> Independent Monitoring Authority, [IMA launches new inquiry to investigate EU Settlement Scheme application delays](#), 4 September 2023



## 3 British citizens in EU Member States

As noted in section 1.1, the Citizens' Rights provisions in the Withdrawal Agreement (WA) set out a framework for the continued legal residence (and associated rights, including social security and healthcare) of British citizens living in the EU, if they were living in an EU Member State at the end of the Brexit transition period on 31 December 2020. However, the WA does not give this group of British citizens onward free movement rights throughout the rest of the EU. Their residence and associated rights are restricted to the Member State in which they were living on 31 December 2020, and they are subject to the same visa requirements as other British citizens if attempting to move from their country of residence to another EU country.

The UK Government also reached separate agreements with the EEA EFTA states and Switzerland in 2018 (all part of the EU free movement area) which put in place similar protections for UK citizens resident in these countries at the end of the Brexit transition period.<sup>48</sup>

### 3.1 Citizens' Rights in different Member States

EU Member States have taken two different approaches to granting British citizens residence rights under the WA:

- 1) **A declaratory system:** Under this system, British citizens who lawfully resided in the Member State in accordance with EU free movement law on 31 December 2020 obtained their new residence status automatically, by operation of law. They may still however be required, as an administrative formality, to register with national authorities and apply for a new residence document that will help them certify their new residence status.

Member States using the declaratory system were as follows: Bulgaria; the Czech Republic; Germany; Estonia; Ireland; Greece; Spain; Croatia; Italy; Cyprus; Lithuania; Poland; Portugal; and Slovakia.

- 2) **A constitutive system:** Under this system, British citizens lawfully residing in the Member State in accordance with EU law on free movement on 31 December 2020 needed to apply for a new residence status. Failure to apply in time could lead to a loss of Withdrawal

<sup>48</sup> See UK Government, [EEA EFTA Separation Agreement](#), 20 December 2018 and UK Government, [Swiss Citizens' Rights Agreement and Explainer](#), 20 December 2018

Agreement rights. Each Member State using this type of system adopted a set of rules and deadlines for resident British citizens to apply for this status.

Member States using a constitutive system were as follows: Belgium; Denmark; France; Latvia; Luxembourg; Hungary; Malta; The Netherlands; Austria; Romania; Slovenia; Finland; and Sweden.

The deadline for applications had passed in every constitutive Member State by the end of 2021, subject to the late application policy required by the WA.<sup>49</sup> However, Denmark extended its deadline to 31 December 2023 (see section 3.3 below).<sup>50</sup>

The European Commission has published details on its website on the [process in each Member State](#), along with links and contact details for further information and support.<sup>51</sup> It has also published [information about the WA](#) and which EU and British citizens are covered by it.<sup>52</sup>

In February 2020, the European Commission adopted an implementing decision to ensure that all residence documents in EU Member States issued under the WA are issued in a uniform format laid down by earlier EU legislation, and that they indicate that they have been issued under the WA.<sup>53</sup>

## 3.2 Difficulties faced by British citizens in confirming rights

British citizens living in EU Member States, and organisations representing them, have raised concerns about difficulties faced in confirming their rights under the WA. These have included poor communication and slow delivery of processes in some Member States and problems accessing appeal processes where residence applications have been rejected in constitutive systems. In declaratory systems, concerns have been raised about how British citizens are expected to provide evidence of their status (in the absence of the need to apply for a new residence status) and the impact this has on accessing services and other entitlements for residents in the host Member State. Some of these issues were raised by the UK Government and UK Embassies and were addressed by Member States by the end of 2022.

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<sup>49</sup> Michaela Benson, [The status of British citizens in Portugal post-Brexit](#), UK in a Changing Europe, 12 August 2022

<sup>50</sup> New to Denmark (official immigration portal), [Brexit: The deadline for submission of application expires 31 December 2023](#), 20 September 2023

<sup>51</sup> European Commission, [Information about national residence schemes for each EU country](#), accessed 26 October 2022

<sup>52</sup> European Commission, [Citizens' rights](#), 21 April 2021, accessed 26 October 2022

<sup>53</sup> [European Commission implementing decision \(EU\) 2022/1945](#), 21 February 2020. See also European Commission, [Report from the Commission pursuant to Article 159\(2\) of the Withdrawal Agreement](#) (PDF), C(2022) 7851 final, 4 November 2022, section 3(a)(i)

Examples of issues for British citizens in either providing evidence for their residence status or applying for their new residence status in Member States include the following in Portugal, France and Italy:

## France (constitutive system)

As France adopted a constitutive system, British citizens resident in France at the end of December 2020 were required to apply for a new residence status under the WA.

Although most British citizens in France had secured their full legal status in France by the end of 2021, obtaining a new residence card, a minority have reported problems.<sup>54</sup>

In December 2021, organisations representing British citizens in France wrote to the European Commission requesting it to take urgent action to address what they described as “the failure by the French authorities to comply with the provisions on citizen’s rights contained in the Withdrawal Agreement”.

The complaint referred to the delays experienced by some British citizens in France in receiving their residence card after attending the relevant appointments, and some citizens not having been offered an appointment at all. It also complained of unreasonable requests for additional information which were not in line with the WA, as well as applications being terminated without a decision being taken and with no appeal process, applications being lost, and vulnerable applicants not being given assistance after requesting it. Some applicants had received residence permits with incorrect details.

The complaint also referred to children experiencing travel issues, with border officials requesting to see their documentation when resident permits are not available to them.<sup>55</sup>

The British Ambassador to France, Menna Rawlings, said in July 2022 that issues with residence documentation for British citizens in France were “largely resolved”, although there were “still a few issues” and the Embassy continued to raise these with French government officials.<sup>56</sup>

The sixth joint report of the UK-EU Specialised Committee on Citizens’ Rights showed that there were an estimated 148,300 British citizens (including family members from third countries) living in France. A higher number, 165,400, had made an application for the new residence card. 164,900 application procedures had been concluded by 7 January 2022. Close to 13,000

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<sup>54</sup> The Local, France, [‘There are still post-Brexit problems ahead for Brits in France’](#), 10 October 2022

<sup>55</sup> RIFT Remain in France, [The EU Rights Clinic and RIFT ask the EU Commission to take urgent action](#), 23 December 2021 The Local, France, [‘There are still post-Brexit problems ahead for Brits in France’](#), 10 October 2022

<sup>56</sup> British Embassy Paris, Facebook page, [Video message from Ambassador](#), 4 July 2022

applications had been refused, withdrawn or declared void, or had been left incomplete.<sup>57</sup>

## Italy (declaratory system)

The Italian authorities have introduced a new biometric residence card for UK citizens with residence rights under the WA. It is not mandatory for British citizens resident in Italy to hold this card. However, some local authorities and service providers have made this a requirement in order for UK citizens to access services.<sup>58</sup>

The British Embassy in Italy has raised this issue with the Italian authorities. Italian Ministries have issued guidance across local authorities and service providers to address this issue. The UK Government and Embassy in Italy has advised British citizens in Italy to [obtain the residence card](#) as the best evidence of their rights under the WA.<sup>59</sup>

In October 2022, the British Embassy in Italy said it was working closely with the Italian authorities to ensure that British residents were able to enjoy their full rights under the WA. It said it was working with the Italian Ministry of Health on new guidance for the local healthcare authorities. It was also working with the Italian Ministry of Interior to ensure that town halls are handling British residents correctly, including those changing address or requesting an identity card.<sup>60</sup>

The sixth joint report of the UK-EU Specialised Committee showed that there were an estimated 33,800 UK citizens (including family members from third countries) living in Italy. 12,900 had made an application for the new residence card, and 11,600 application procedures had been finalised (as of 24 November 2021).<sup>61</sup>

## Portugal (declaratory system)

As Portugal is one of the Member States using a declaratory system, British citizens were not required to apply for a new residence status. However, they were still required to apply for a new biometric residence card confirming their residence status.

The sixth and final joint report published in January 2022 by the UK-EU Specialised Committee on Citizens' Rights on the implementation of WA residence rights (see section 3.10 below) showed that there were an estimated 34,500 UK citizens (including family members from third countries)

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<sup>57</sup> European Commission, [Sixth joint report on the implementation of residence rights under part two of the Withdrawal Agreement](#), 26 January 2022, Annex A.

<sup>58</sup> The Local, Italy, [Brexit: How British citizens in Italy are overcoming bureaucratic problems](#), 15 April 2021

<sup>59</sup> FCDO, British Embassy in Italy, [Newsletter "Passaparola", issue one](#), 15 July 2021

<sup>60</sup> FCDO, British Embassy in Italy, [Newsletter "Passaparola – issue two](#), 13 October 2021

<sup>61</sup> European Commission, [Sixth joint report on the implementation of residence rights under part two of the Withdrawal Agreement](#), 26 January 2022, Annex A.

resident in Portugal. It said that 34,000 had made an application for a residence document, but there was no data available on how many application procedures had been finalised (as of 31 December 2021).<sup>62</sup>

According to reports in August 2022, many British citizens living in Portugal had been unable to access healthcare, change jobs, or travel in and out of the country as they had not yet been issued with their residence cards. A temporary document and QR code had been issued when applications were made, which the Portuguese Immigration and Border Service (SEF) said should suffice as proof of residence. However, British citizens complained that these were not recognised locally or at international borders. Reports cited examples of UK citizens in Portugal being detained at airports, and being unable to register for health care and having to pay for hospital treatment as a result of the delay in getting the residence card.<sup>63</sup>

The Portuguese Government announced at the end of September 2022 that it would be opening 13 new SEF service points across Portugal where British citizens would be able to present their biometric data and speed up the process for issuing residence cards. This was in addition to five already open. The Minister of Internal Administration, José Luís Carneiro, said he hoped that all British citizens living in Portugal would have the new post-Brexit residence card by the end of the year.<sup>64</sup> The British Ambassador to Portugal, Chris Sainty, welcomed the announcement and said “urgent progress” was needed to meet the end of year deadline.<sup>65</sup>

In March 2023, the Ambassador said that while most British citizens had now applied for the new residence card, there were still “several thousand” British citizens in Portugal who had yet to come forward.<sup>66</sup> In a Facebook video he encouraged them to do so, and also referred to the process launched by SEF in February 2023 to invite third country family members of British citizens to apply for the new residence cards.<sup>67</sup> In its evidence to the House of Lords European Affairs Committee in May 2023, British in Europe (BiE), a voluntary organisation and advocacy group for British citizens in the EU, said there were

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<sup>62</sup> European Commission, [Sixth joint report on the implementation of residence rights under part two of the Withdrawal Agreement](#), 26 January 2022, Annex A.

<sup>63</sup> See Michaela Benson, [The status of British citizens in Portugal post-Brexit](#), UK in a Changing Europe, 12 August 2022; The Guardian, [Almost 35,000 Britons in limbo as Portugal fails to issue post-Brexit ID cards](#), 6 August 2022; and Schengen Visa Info, [Portugal's Failure to Issue Post-Brexit Residence Permits Hinders Life of Almost 35k Brits](#), 9 August 2022

<sup>64</sup> Government of Portugal, [Novo Posto de Atendimento do SEF em Lisboa acelera emissão de cartão de residência para cidadãos britânicos](#), 26 September 2022. See also RTP, [MAI quer todos os britânicos em Portugal com novo cartão de residência até ao final do ano](#), 26 September 2022

<sup>65</sup> Chris Sainty (@ChrisSaintyUK), [Twitter](#), 27 September 2022 [accessed 2 November 2022]

<sup>66</sup> The Portugal News, [Exciting times ahead](#), 1 March 2023

<sup>67</sup> Brits in Portugal, [Facebook](#), 6 March 2023 (accessed 14 November 2023). See also Schengen Visa Info, [Portugal Issued Over 27,000 Residence Permits to British Citizens](#), 3 March 2023 and Portugal Resident, [SEF opens new door for UK nationals and family members](#), 24 February 2023

still problems with the appointment process, the issuing of incorrect cards, and the payment system for cards in Portugal.<sup>68</sup>

An update provided by Home Office minister Lord Murray of Blidworth to the European Affairs Committee in October 2023 (see section 3.5 below), said that the British Embassy in Portugal was continuing to work with the Portuguese authorities to support their roll-out of residence cards. He said that more than 32,000 British citizens resident in Portugal had attended a biometrics appointment and paid to receive their card. This meant that the vast majority of eligible UK nationals had now completed the process, though the Embassy understood that just over 38,000 UK nationals had initially registered on the Brexit portal. The Government was encouraging those British citizens and eligible family members in Portugal who were yet to commence or finalise the process to do so as soon as possible. The minister said that UK consular teams in Portugal were continuing to work to support British citizens with complex cases, such as being unable to provide biometric data due to disability. The Government was also aware of cases where British citizens had received a residence card with a shorter validity period than they expected, and it had raised this issue with the Portuguese authorities.<sup>69</sup>

### 3.3

## Ongoing issues raised in 2023

Ongoing issues continue to be raised by BiE and other groups representing British citizens in the Member States. In evidence to the House of Lords European Affairs Committee in May 2023, BiE said processes were relatively smooth in some Member States with constitutive systems. But some countries were failing to apply WA provisions obliging host States to ensure procedures for applications are smooth, transparent and simple, to provide assistance to applicants to avoid or correct errors and give opportunities to furnish supplementary evidence, and to provide access to judicial and administrative redress procedures where applications are refused.<sup>70</sup>

BiE also referred to continuing problems with the issuing of new residence cards in Portugal and increasing numbers of refusals of applications in some constitutive countries, including Sweden, Denmark, Finland and Belgium.<sup>71</sup> This was linked to varying approaches to late applications across constitutive countries. Sweden is among countries with a stricter approach. According to BiE, around 900 post-deadline applications had been received in Sweden by

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<sup>68</sup> British in Europe, [Written Evidence \(Miss0008\)](#), House of Lords European Affairs Committee, 5 May 2023

<sup>69</sup> As above

<sup>70</sup> BiE referred specifically to Articles 18(1)(e), (o) and (r) of the Withdrawal Agreement. See British in Europe, [Written Evidence \(Miss0008\)](#), House of Lords European Affairs Committee, 5 May 2023; House of Lords European Affairs Committee, [European Affairs Committee Corrected oral evidence: Citizens' rights](#), 16 May 2023

<sup>71</sup> British in Europe, [Written Evidence \(Miss0008\)](#), House of Lords European Affairs Committee, 5 May 2023

May 2023, but 60% of those applications had been rejected.<sup>72</sup> In some cases, notably in Sweden and Denmark, BiE attributed the failure by some British citizens to apply for residency in time to poor communication by the national authorities. However, in the case of Denmark this was rectified by the authorities and the deadline extended after a local campaign and representations by the UK Government.<sup>73</sup>

Other issues highlighted by BiE included the approach taken in some Member States to British citizens who had been absent from the host State for a temporary period and how this has impacted on their residency rights, and problems encountered by British citizens seeking to upgrade to permanent residence status. Problems related to family reunification procedures in some countries were also highlighted, as well as the treatment of people with dual citizenship.<sup>74</sup> There was also a lack of clarity in some Member States as to the status of children of British citizens and whether they are required to have residence documentation.<sup>75</sup> This included confusion in Malta as to whether young people needed new documentation when they turned 18. Another issue raised was unequal treatment of British citizens compared to national citizens in some countries with regard to property ownership, taxation rules and access to public services.<sup>76</sup>

The UK Government continued to raise many of these issues in meetings of the joint UK-EU WA Specialised Committee of Citizens' Rights (see section 3.7 below).

## 3.4 EU Member States issuing leave orders to UK citizens

Eurostat figures for the period showed that 2,250 British citizens were ordered to leave EU countries between 2020 and September 2022. Adding the four EFTA countries increased the figure to 2,830.<sup>77</sup> Some individual cases, including leave orders issued to vulnerable people (notably in Sweden) and for missing application deadlines by a few days (in Denmark), have been highlighted in the media and attracted political attention in the UK.<sup>78</sup>

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<sup>72</sup> As above

<sup>73</sup> [Written Evidence \(Miss0008\)](#) As above. See also [Letter from Home Secretary to Lord Wood of Anfield, House of Lords European Affairs Committee](#) (PDF), 2 August 2023

<sup>74</sup> British in Europe, [Written Evidence \(Miss0008\)](#), House of Lords European Affairs Committee, 5 May 2023

<sup>75</sup> As above

<sup>76</sup> House of Lords European Affairs Committee, [European Affairs Committee Corrected oral evidence: Citizens' rights](#), 16 May 2023

<sup>77</sup> Europe Street News, [Sweden tops European countries for expulsion of British citizens since Brexit](#), 8 January 2023. See also The Guardian, [Brexit: thousands of Britons expelled from EU since end of transition period](#), 6 January 2023

<sup>78</sup> See The Guardian, [Swedish police moving ahead with plan to deport UK woman with Alzheimer's](#), 3 April 2023 and [Sweden has expelled 1,100 British nationals since Brexit](#), 4 April 2023



Sweden was responsible for close to half of the leave orders among EU Member States, issuing 1,050 leave orders to British citizens in the period covered. The Netherlands was second highest, with 615. According to the Dutch immigration agency, however, an application for a residence permit can be made after a leave order has been issued. It said that 70 British citizens were granted a residence permit after having been issued with a leave order.<sup>79</sup>

Other countries that had issued more than 100 leave orders to British citizens were Norway (455), Switzerland (125) and Malta (115).<sup>80</sup> Spain, Italy, Portugal, Slovakia, Slovenia and Luxembourg did not issue any leave orders over the period, according to the data.<sup>81</sup>

### 3.5 House of Lords recommendations and follow-up work

The House of Lords European Affairs Committee published a report on the WA Citizens' Rights provisions and their implementation in July 2021. Recommendations included better communication of the new requirements to resident British citizens by Member States, clearer guidance on the new systems and application processes in place and continued UK Government funding to non-governmental organisations supporting British citizens in Member States to access their rights under the WA.<sup>82</sup>

The Government responded to the report in November 2021. It said it was continuing to call on the EU and Member States to meet their obligations under the WA to ensure British citizens were aware of any procedures they needed to complete, and to provide clear guidance to British citizens on the application process and on reasonable grounds for late applications. It expressed concern about the quality of communication to British citizens in some EU Member States. It said the Government had also implemented its own communication campaigns to British citizens in the EU, including outreach events carried out by embassies and consulates. In addition, it had given funding support through the UK Nationals Support Fund (see below).

The committee undertook follow-up work on the Citizens' Rights provisions in 2023.<sup>83</sup> In May 2023, it wrote to the then Home Secretary, Suella Braverman, noting "serious problems" in relation to residence schemes in some Member

<sup>79</sup> Europe Street News, [Sweden tops European countries for expulsion of British citizens since Brexit](#), 8 January 2023.

<sup>80</sup> As above

<sup>81</sup> The Guardian, [Sweden has expelled 1,100 British nationals since Brexit](#), 4 April 2023

<sup>82</sup> House of Lords European Affairs Committee, [Citizens' Rights](#) (PDF), HL Paper 46, 23 July 2021

<sup>83</sup> See also House of Lords Library, [Citizens' rights after Brexit: Report and follow-up work of the House of Lords European Affairs Committee](#), 18 August 2023

States and raising many of the issues highlighted in the evidence session with BiE.<sup>84</sup>

In response, the Home Secretary said that “serious shortcomings remain in several Member States”.<sup>85</sup> She said the Government would continue to press issues of concern at both bilateral and EU level. She said the Government was continuing to urge the European Commission “to regularly scrutinise and resolve issues of implementation by Member States” to ensure the protection of British citizens and their family members “mirroring the role of the Independent Monitoring Authority in the UK”.<sup>86</sup>

The Home Secretary said that the Government had made representations to both the Danish and Swedish governments regarding the high rate of refusals, and as a result the Danish authorities had extended the deadline for British citizens to apply for residence until 31 December 2023. She said there was a need to secure greater clarity in the Member States operating a constitutive scheme regarding the scope for late applications. The Government was unable to identify any Member State which publishes detailed guidance on what constitutes reasonable grounds for making a late application, and nor had this information been shared with the UK Government privately. She contrasted this with detailed guidance on what constituted reasonable grounds for making a late application for settled status in the UK which had been published since April 2021.<sup>87</sup>

In a further letter to the Home Secretary on 20 September 2023, the new Chair of the European Affairs Committee, Lord Ricketts, expressed concern at the insufficient assistance available to UK citizens in the EU on Citizens’ Rights issues given that there had been a rise in the number of complex cases and an ongoing need for support. The letter expressed disappointment that the Government did not plan to offer additional support, or to reopen the UK Nationals Support Fund, which had ended in 2022 (see section 3.6 below). It asked the Government to reconsider its “policy of scaling back dedicated support for UK citizens on Citizens’ Rights issues” and said additional resources should be allocated to UK embassies to provide this support.<sup>88</sup>

The 2021 Citizens’ Rights report by the European Affairs Committee was debated in the House of Lords Grand Committee on 11 September 2023.<sup>89</sup> Home Office minister Lord Murray of Blidworth said the Government continued to press the EU for clear communications to British citizens in the EU on how they can secure and access their rights. It had also urged the Commission to ensure that Member States published flexible and pragmatic

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<sup>84</sup> [Letter from the Chair of the European Affairs Committee to Home Secretary \(PDF\)](#), 25 May 2023

<sup>85</sup> [Letter from Home Secretary to Lord Wood of Anfield, House of Lords European Affairs Committee \(PDF\)](#), 2 August 2023

<sup>86</sup> As above<sup>87</sup> As above

<sup>87</sup> As above

<sup>88</sup> [Letter from the Chair of the European Affairs Committee to the Home Secretary \(PDF\)](#), 20 September 2023. See also the response to this letter from the Home Secretary [Letter from Home Secretary to Chair of House of Lords European Affairs Committee \(PDF\)](#), 26 October 2023

<sup>89</sup> [HL Deb 11 September 2023](#) cc143-144 GC

guidance as to what constitutes reasonable grounds for late residency applications so that British citizens did not encounter difficulties.<sup>90</sup>

Lord Murray sent a follow-up letter to the Committee on 18 October 2023, in which he stressed that the rights of British citizens in the EU remained a priority for the UK Government. He said there was dedicated team at the Foreign, Commonwealth and Development Office (FCDO) monitoring implementation of the WA Citizens' Rights provisions across Member States, which regularly engaged with the network of UK embassies, with Member States and with the European Commission to address issues faced by British citizens. This work was also being undertaken through forums such as the Specialised Committee on Citizens' Rights (SCCR) and the WA Joint Committee and was informed by engagement with local groups in the Member States representing British citizens. While programmes such as the UK Nationals Support Fund had ended, he said that ongoing assistance to British citizens in the EU continued to be provided.<sup>91</sup>

## 3.6 UK Government resources to support British citizens in the EU

The UK Nationals Support Fund (UKNSF) allocated over £4 million in grant funding to third party organisations to support British citizens in the EU in securing their rights under the WA. The UK Government said this had helped to reach over 400,000 people, with more than 20,000 British citizens having been directly supported by a caseworker. The fund supported organisations in 12 countries. The Government said it had focused on countries with large numbers of British citizens and where it was possible to find suitable partner organisations.<sup>92</sup>

The funding ended on 31 March 2022.<sup>93</sup> A [BiE letter to UK Government ministers](#) in January 2022 expressed concern that deadlines for applications had closed at the end of December 2021 but that “many thousands of UK citizens had yet to apply before Christmas”. The letter added that many were still waiting for residence cards or permits to be delivered. It noted:

The Withdrawal Agreement is a complex document and implementation issues will continue to arise for years, if not decades, not least because the vast majority of British citizens affected are of working age or younger. Issues will arise not only in relation to residence rights but in areas ranging from family

<sup>90</sup> [HL Deb 11 September 2023](#) cc158-159 GC

<sup>91</sup> [Letter from Parliamentary Under Secretary of State, Home Office, to Chair of European Affairs Committee](#), 18 October 2023

<sup>92</sup> UK Government, [Response to the report on Citizens' Rights of 23 July by the European Affairs Committee](#) (PDF), published 19 November 2021

<sup>93</sup> Foreign, Commonwealth & Development Office, [UK Nationals Support Summary](#), 26 August 2022

reunification, to employment, to recognition of qualifications and social security rights.<sup>94</sup>

Furthermore, the letter said that the European Commission, the entity charged with overseeing implementation of British Citizens' Rights in the EU, was "not resourced to do this". Neither was the Foreign, Commonwealth and Development Office (FCDO) and its consular posts. Commenting on the ending of the UKNSF it said:

From where we sit it appears that the entire architecture of support for 1.2 million British citizens in the EU is falling away in the first quarter of 2022, after which British citizens will be on their own, before many of them have reached a point where they can obtain permanent residence under the WA.<sup>95</sup>

BiE said it was ceasing to operate these activities in early 2022 due to a lack of funding, although it resumed operations on a more limited basis in 2023.<sup>96</sup> Professor Michaela Benson of Lancaster University commented later in 2022:

The lack of dedicated monitoring and the loss of this major player in advocacy limit the routes through which British citizens living in the EU/EEA can bring these issues to public and political attention.<sup>97</sup>

BiE written evidence to the House of Lords European Affairs Committee in May 2023 referred to decreasing resources from the UK Government and from Member States to support British citizens in the EU.<sup>98</sup> It said this was coming at a time when there was a rise in complex cases.<sup>99</sup> It noted that in the past there had been a network of Citizens' Rights officers (CROs) in place in UK embassy posts across the EU, EEA and Switzerland, but that the numbers of these posts had decreased. It said that the funding allocated for CROs had ceased since the end of March 2023.

BiE also referred to concerns about the loss of contacts and "institutional memory" at embassies over time as CROs and other contacts moved on, contributing to varying levels of support from embassies.<sup>100</sup> At the same time, it said there had been a reduction in communications campaigns in EU Member States.<sup>101</sup> It reiterated that there were no funded support organisations available to assist British citizens in enforcing their rights in the

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<sup>94</sup> British in Europe, [Letter to Secretaries of State as BiE winds down](#), 25 January 2022

<sup>95</sup> As above

<sup>96</sup> See Europe Street News, [British in Europe closing down after 5 years: interview with co-chair Jane Golding](#), 20 February 2022. In January 2023, British in Europe said it was continuing work to support UK citizens in the EU on a voluntary basis, after having secured funding from the Joseph Rowntree Reform Trust for a project on implementing voting rights for UK citizens outside the UK. See British in Europe, [Facebook](#), 19 January 2023

<sup>97</sup> UK in a Changing Europe, [The status of British citizens in Portugal post-Brexit - UK in a changing Europe](#), 12 August 2022

<sup>98</sup> British in Europe, [Written Evidence \(Miss0008\)](#), House of Lords European Affairs Committee, 5 May 2023

<sup>99</sup> House of Lords European Affairs Committee, [European Affairs Committee Corrected oral evidence: Citizens' rights](#), 16 May 2023

<sup>100</sup> As above

<sup>101</sup> British in Europe, [Written Evidence \(Miss0008\)](#), House of Lords European Affairs Committee, 5 May 2023

EU Member States but only volunteer groups like BiE and national groups in the Member States.<sup>102</sup>

Both the Home Secretary's letter to the European Affairs Committee in August 2023, and Lord Murray's letter in October 2023 (see section 3.5) stressed the Government's commitment to supporting British citizens in the EU and referred to the work of the FCDO team on Citizens' Rights. The Home Secretary acknowledged that given the expiry of residency application deadlines in constitutive Member States (apart from Denmark which had extended its deadline), some of the temporary provisions set up to support registration processes had been downsized or come to an end (including the UK Nationals Support Fund). However, she said a range of teams, including the "Justice and Home Affairs Network of attaches", continued to address issues affecting British citizens in the Member States and that British citizens still had the normal recourse to consular services provided to all British citizens abroad.<sup>103</sup>

### 3.7 Concerns raised in the joint UK-EU Committees

As noted above, the UK Government has raised concerns about Citizens' Rights implementation directly with the European Commission and in the WA joint committees. In May 2020, the then Chancellor of the Duchy of Lancaster and Cabinet Office Minister Michael Gove wrote to the Vice President of the European Commission, Maroš Šefčovič, expressing concerns about the implementation of the Citizens' Rights provisions in EU Member States. These concerns related to the variable quality of information and awareness-raising campaigns aimed at eligible British citizens, the short application windows (periods of time when it was possible to make applications for residence documents) in some Member States, overly complex procedures, and lack of support for vulnerable citizens.<sup>104</sup>

Joint statements following meetings of the Joint Committee (currently co-chaired by the Foreign Secretary and the Commission Vice-President) and the Specialised Committee on Citizens' Rights (SCCR) established by the WA summarise concerns raised by both the UK and EU in the meetings.<sup>105</sup>

At the SCCR meeting on 24 January 2022, the UK raised the following:

- For declaratory Member States, the UK Government raised concerns relating to British citizens providing evidence of their status (in the

<sup>102</sup> As above

<sup>103</sup> [Letter from Home Secretary to Lord Wood of Anfield, House of Lords European Affairs Committee \(PDF\)](#), 2 August 2023

<sup>104</sup> Letter from Michael Gove, Chancellor of the Duchy of Lancaster, to Maroš Šefčovič, Vice-President of the European Commission, [Citizens' Rights in the Withdrawal Agreement](#), 14 May 2020 (pdf). See also European Parliamentary Research Service, [EU and UK citizens' rights after Brexit: An overview](#), June 2020

<sup>105</sup> The Committee structure is explained in Commons Library Insight, [Governing the new UK-EU relationship and resolving disputes](#), 24 February 2021

absence of the need to apply for a new residence status). It reiterated concerns that British citizens continue to experience difficulties when seeking to access benefits and services in some Member States. It requested that the EU emphasise the need for clear guidance in declaratory Member States.

- For constitutive Member States, the UK expressed concern at the lack of detail around late residence application policies. The UK encouraged the EU to ensure that all constitutive Member States match “the UK’s pragmatic and flexible approach”.

The UK also encouraged the EU “to take a more proactive role in resolving cases of mis-application by Member States”.<sup>106</sup>

Similar concerns were raised again at further meetings of the SCCR in 2022 and 2023. At the meeting of 15 June 2022, the UK also expressed concern that some Member States may not fully comply with the residence procedure under the WA “or may offer insufficient safeguards to those whose applications have been rejected”. The UK also raised other issues such as family reunification, the need for detailed statistics on residence, multiple statuses, and equal treatment with respect to property rights. The EU, for its part, provided assurances that “issues raised by the UK were in the process of being resolved and that some declaratory Member States issued or would issue clear guidance to reduce mis-application”.<sup>107</sup>

At the SCCR meeting on 17 November 2022, the UK expressed concern about difficulties British citizens had experienced evidencing status due to the slow issuance of residence documents in one Member State and asked the Commission to do more on this issue. It also raised the issue of British citizens who have experienced issues transiting through the Schengen Area and asked the Commission to ensure relevant Annexes of the Schengen Borders Code are updated.<sup>108</sup>

At the SCCR meeting on 25 May 2023, the UK continued to highlight the lack of publicly available guidance on reasonable grounds for making a late application in some Member States, also highlighting the negative consequences in implementation this creates for British citizens. The UK also raised issues in some Member States around property rights for British citizens, people demonstrating multiple statuses under the long-term residence directive, and British citizens with special statuses (for example,

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<sup>106</sup> European Commission, [Joint statement following the meeting of the Specialised Committee on Citizens' Rights](#), 24 January 2022. Similar concerns were expressed in the WA Joint Committee in February 2022. See Foreign, Commonwealth & Development Office, [Joint statement on the meeting of the Withdrawal Agreement Joint Committee: 21 February 2022](#), 21 February 2022

<sup>107</sup> UK Government, [Citizens' Rights Specialised Committee meeting, 15 June 2022: joint statement](#), 20 June 2022

<sup>108</sup> European Commission, [Joint statement following the meeting of the Specialised Committee on Citizens' Rights](#), 13 January 2023

staff formerly employed in UK embassies) not being able to access rights guaranteed to them under the WA.<sup>109</sup>

## 3.8 Difficulties in accessing institutional support

One difficulty faced by British citizens living in the EU in seeking to secure their rights under the WA is the absence of a comparable body to the UK Independent Monitoring Authority to provide oversight. While the Independent Monitoring Authority has been established in the UK to monitor the UK's implementation of its Citizens' Rights obligations under the WA, the European Commission performs this role on behalf of EU Member States in respect of British citizens living in the EU. However, concerns have been raised that the European Commission is not resourced to perform this role and that it cannot resolve issues raised by British citizens in the EU in the same way as the Independent Monitoring Authority does for EU citizens in the UK.

The Independent Monitoring Authority has [established a complaints portal](#) through which EU citizens in the UK can raise concerns about how their rights under the WA are being implemented. It also undertakes and publishes an annual survey of concerns raised and can take legal action (see section 2.2 above)<sup>110</sup>.

The European Commission has produced guidance for national authorities in the Member States and has published a set of Q&As for British citizens residing in each State.<sup>111</sup> It directs citizens to the national authorities of the Member States in order to address concerns about the implementation of their WA rights in those States. The Commission also provides details of its general complaint service for complaints about EU Member States not correctly implementing EU law.<sup>112</sup>

In evidence to the House of Lords European Affairs Committee in May 2023, co-chair of BiE Jane Golding commented that the European Commission's expert team was "a good but small team with limited resources". She noted that British citizens could also use the Commission's outsourced advice service, [Your Europe](#), which was "good but [...] only an advice service" and not in position to help individuals in enforcing their rights.<sup>113</sup>

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<sup>109</sup> As above

<sup>110</sup> Independent Monitoring Authority, [European citizens' concerns after Brexit Report on the IMA's first survey](#), May 2021

<sup>111</sup> See European Commission, [Q&A for UK nationals' residence rights in the EU](#), 25 February 2021.

<sup>112</sup> See European Commission, [Withdrawal Agreement Citizens' Rights webpage](#) which provides a link to pdf document, [Enforcement of individual rights of UK nationals under Part Two of the Withdrawal Agreement](#) (pdf), undated, accessed 27 October 2022

<sup>113</sup> House of Lords European Affairs Committee, [European Affairs Committee Corrected oral evidence: Citizens' rights](#), 16 May 2023



## 3.9

## European Commission annual report on implementation

Article 159 (2) of the WA provides that the European Commission, as well as the Independent Monitoring Authority, should provide an annual report to the Specialised Committee on Citizens' Rights on the implementation of the Citizens' Rights provisions of the WA. The Commission published its report for 2021 in November 2022.<sup>114</sup> This outlined its work in producing guidance and information to Member State authorities and British citizens in the Member States, as well as engagement with groups representing British citizens. The report said that the Commission had reviewed residence related measures in Member States and engaged with Member States to ensure their procedures were consistent with the WA provisions and to address implementation issues. It said the Commission had worked closely with BiE to clarify the interpretation of the WA and "to seek early resolution of concerns raised in bilateral contacts with Member States".<sup>115</sup>

The annual report also provided an overview of complaints made at the EU and Member State level in relation to implementation of the Citizens' Rights provisions. It said the most effective approach for British citizens to enforce their rights would be at Member State level, given that the national authorities had the main responsibility for implementing the WA. In addition to administrative redress procedures, it said that British citizens could also make an appeal and ask the relevant domestic court to examine their case.

At the EU level, it said that complaints could be made to the European Commission, using the standard [complaint form](#) for any breaches of EU law.<sup>116</sup> It said that British citizens trying to ascertain whether there was a breach of the WA and needed to know what to do about this could also use its outsourced [Your Europe Advice](#) service, which is staffed by independent legal experts.<sup>117</sup>

The report provided data on complaints received by the Commission in 2021. 40 complaints had been received regarding the application of the WA Citizens' Rights provisions. These were categorised as follows:

- 21 complaints concerning rights related to residence, and residence documents.
- 7 complaints related to travel and border crossing.
- 8 complaints related to equal treatment.

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<sup>114</sup> European Commission, [Report from the Commission pursuant to Article 159\(2\) of the Withdrawal Agreement](#) (PDF), 4 November 2022

<sup>115</sup> As above

<sup>116</sup> As above

<sup>117</sup> As above

- 1 complaint related to rights of workers and the self-employed.
- 3 complaints related to professional qualifications.<sup>118</sup>

It identified the following outcomes in relation to the 31 cases that had been closed:

- 5 complaints were considered as founded but were not pursued further by the Commission.
- 6 complaints were considered as founded but were solved by other means (change of regional legislation and change of interpretation by national authorities).
- 11 complaints were considered as unfounded, given that no violation of EU law was identified by the Commission.
- 9 complaints were considered as unfounded, given there was insufficient evidence for the infringement.<sup>119</sup>

The report also provided data on inquiries received by the Your Europe Advice service in 2021. Inquiries were received from 1,443 British citizens:

- 75% of eligible inquiries concerned Chapter 1 of Title II (residence) of the Citizens' Rights provisions. The most common issues in this category related to the rights of family members, residence applications, and visa exemption.
- 7% concerned Chapter 2 of Title II (workers and self-employed persons). The most common issues in this category related to access to employment, cross-border self-employed provision of services, and cross-border work.
- 0.5% concerned Chapter 3 (professional qualifications),
- 13% concerned Title III (coordination of social security schemes). The most common issues in this category related to old age benefits, country of insurance and general management of co-ordination of social security schemes, and health care, sickness or maternity benefits
- 4% of inquiries concerned other issues, such as vehicles and driving licences.<sup>120</sup>

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<sup>118</sup> As above

<sup>119</sup> As above

<sup>120</sup> European Commission, [Report from the Commission pursuant to Article 159\(2\) of the Withdrawal Agreement](#) (PDF), 4 November 2022

## 3.10

## Applications for residence or new residence documents

The Specialised Committee on Citizens' Rights (SCCR) published a series of [joint reports with updates on implementation of residence rights](#) under the Citizens' Rights provisions of the Withdrawal Agreement. The reports were published every few months until January 2022. This was intended to be the last report given that the last deadline for residence applications had passed on 31 December 2021.

An annex to the report provided a statistical overview of applications in each Member State. It showed that 98% of the estimated 289,900 British citizens resident in constitutive Member States had applied for a new residence status. Of these, the highest number of applications had been made in France (165,400), followed by The Netherlands (45,200).

Where the application process had been concluded, 53.5% of applicants had been granted permanent residence, and 37.6% had been granted non-permanent residence. Other applications were refused, withdrawn, declared void or left incomplete.

In Member States operating declaratory residence systems, the January 2022 report showed that 34% of the estimated 804,400 eligible British citizens had applied for a new residence document.

The Member State with the highest estimated number of British residents (both overall, and among Member States with declaratory systems) was Spain. Of the estimated 430,000 British citizens and family members resident in Spain, 187,200 had made an application for a new residence document. 187,000 of these applications had been finalised by the end of December 2021.

Other Member States with declaratory systems with high numbers of British citizens resident are Ireland (115,000) and Germany (85,100). The next highest is Cyprus (38,500), followed by Portugal (34,500) and Italy (33,800).<sup>121</sup>

British citizens have the right to work and live in Ireland separately to the WA, through the [Common Travel Area](#).

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<sup>121</sup> European Commission, [Sixth joint report on the implementation of residence rights under part two of the Withdrawal Agreement](#), 26 January 2022

## Further reading

House of Commons Library Briefing Paper, [EU Settlement Scheme](#)

House of Commons Library Insight, [EU Settlement Scheme applications: Figures in final month](#), 14 June 2021

House of Commons Library Briefing Paper, [After Brexit: Visiting, working, and living in the EU](#)

House of Commons Library Briefing Paper, [The UK-EU Trade and Cooperation Agreement: Temporary business travel](#)

House of Commons Library Briefing Paper, [The UK's EU Withdrawal Agreement](#)

European Parliamentary Research Service, [EU and UK citizens' rights after Brexit: An overview](#), June 2020

House of Lords Library, [Citizens' rights after Brexit: Report and follow-up work of the House of Lords European Affairs Committee](#), 18 August 2023

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