



# **Implementation of the Withdrawal Agreement Citizens' Rights**

**Council Working Party 6 February 2020**

## **Implementation of the Withdrawal Agreement**

- Correct implementation of the Agreement => top priority for the Commission as guardian of the Treaties
- In the UK => Independent Monitoring Authority (Art 159 of the Agreement)
- The Guidance Note is purely informative and does not supplement or complete the Agreement
- The guidance on social security coordination was discussed at technical level with all Member States

## **Residence rights during the transition period**

- EU law on free movement of persons will continue to apply during the transition period
- i.e. until 31 December 2020, UK nationals and their family members benefit from Directive 2004/38/EC
- No change during the transition period

## **Residence rights under the Withdrawal Agreement**

### General principles:

- Part Two of the Withdrawal Agreement on citizens' rights (exception Article 19 WA) will enter into force after the end of the transition period, i.e. on 1 January 2021
- General approach underpinning Part Two = grandfathering of free movement rights in the host State for UK nationals who exercised their free movement rights before the end of the transition period

# Residence rights under the Withdrawal Agreement

## Points to highlight:

- Territorial scope = the host State; no rights of onward movement to another Member State under the Agreement (Art 9(c)(ii))
- Personal scope/beneficiaries:
  - + UK nationals who acquired a permanent residence right under Directive 2004/38/EC and who have not been absent from the host State for a period exceeding 5 consecutive years (Art 11, subpara 2 Agreement)
  - + Persons other than those defined in Article 3(2) of Directive 2004/38/EC whose presence is required by United Kingdom nationals in order not to deprive them of a right of residence granted by the Agreement (Art 9(a)(ii))
  - Only prior family members = family members at the end of the transition period; exception: future children (Art 10(1)(e)(iii) of the Agreement)
  - Prior family members cannot become right holders (Art 17(1), 2<sup>nd</sup> sentence of the Agreement)

## Residence rights under the Withdrawal Agreement

- Host State does not have discretion in applying the limitations and conditions of the residence rights, other than in favour of the beneficiaries (Art 13(4) of the Agreement)
- As of 1 January 2026, UK may decide no longer to accept ID cards of EU beneficiaries for entering and exiting its territory if the cards do not include a chip with biometric identification (Art 14(1), subpara 2 of the Agreement)
- Accumulation of periods of legal residence in accordance with EU law before and after the end of the transition period for acquiring the right of permanent residence (Arts 15(1) and 16 of the Agreement)
- Permanent right of residence shall be lost only through absence from the host State for a period exceeding 5 consecutive years (Art 15(3) of the Agreement)
- Host State may restrict rights of residence and entry of UK nationals and their family members in accordance with national legislation where the conduct occurred after the end of the transition period (Art 20(2) of the Agreement)

# Residence rights under the Withdrawal Agreement

- Constitutive scheme = host State requires UK nationals and their family members to apply for a new residence status which confers the Agreement residence rights and a document evidencing the new status (Art 18(1) of the Agreement)
  - DDL for applications: 6 months from the end of the transition period (i.e. 30 June 2021) (Art 18(1)(b) of the Agreement), unless technical problems are notified by EU to UK (Art 18(1)(c) of the Agreement) or a beneficiary has failed to respect the deadline for reasonable grounds (Art 18(1)(d) of the Agreement)
  - Host State may carry out systemic criminality and security checks on applicants (Art 18(1)(p) of the Agreement)
  - Host State shall help the applicants avoid errors and omissions in their applications and give them the opportunity to furnish supplementary evidence and correct any deficiencies, errors or omissions (Art 18(1)(o) of the Agreement)
- Format of the residence document under both constitutive (Art 18(1)) and declaratory system (Art 18(4)) = uniform residence permit for third-country nationals as established by Regulation (EC) No 1030/2002

# Residence rights under the Withdrawal Agreement

Choices to be made by host State:

- Constitutive vs declaratory system (Art 18(1) vs 18(4) of the Agreement)
- Issuance of residence documents during the transition period (Art 19 of the Agreement)
- More favourable approach for UK nationals and their family members than EU law limitations and conditions of the residence rights (Art 13(4) of the Agreement)





# Workers' rights and social security coordination



## Workers' rights

- **Equal treatment** with nationals (e.g. access to employment; working conditions; collective rights; access to social and tax advantages)
- **Workers' children** can access education in the host State (and right to reside)
- **Frontier workers**
  - Will continue to work as frontier workers after the end of transition
  - New document to be issued certifying status

## Social security coordination

- During transition, EU law on social security coordination will continue to apply
- No change during the transition period except:
- UK has an **observer status** in the Administrative Commission on the Coordination of Social Security Systems
- UK will continue to use the Electronic Exchange of Social Security Information and bear the related costs

# Social security rights under the Withdrawal Agreement

- **It provides for:**

**1) The full application** of EU social security coordination rules for all the persons who, at the end of the transition period, are in a situation involving both a Member State and the United Kingdom at a time.

- => e.g. healthcare, unemployment benefits, family benefits, one legislation applicable at a time

**2) The partial application** of the social security coordination rules after the end of the transition period for persons who are no longer in a situation involving both a Member State and the United Kingdom at a time.

- => e.g. aggregation, the continuation of necessary/planned healthcare



# Recognition of professional qualifications

## **During the transition period**

- The relevant EU Law provisions (e.g. the Professional Qualifications Directive, the Lawyers' Directives etc.) will continue to apply to and in the UK as if the UK were a Member State
- the UK will continue to have access to and to participate in the European Professional Card procedure and the alert mechanism
- the UK will no longer participate in the meetings of the Group of Coordinators

## **After the end of transition**

- Recognition decisions for establishment purposes obtained before the end of the transition period will continue to be valid and produce all their effects (Article 27)
- On-going recognition procedures for establishment purposes will be completed under the relevant EU law provisions (Article 28)
- The EU and the UK will have the obligation to cooperate for the completion of the on-going applications (Article 29)
- The UK will cease to have access to the European Professional Card, the alert mechanism and the regulated professions database; a maximum of 9-month exception for pending European Professional Cards

## **Persons covered**

- Union citizens who exercised their right to reside in the UK before the end of the transition period and continue to reside there thereafter
- UK nationals who exercised their right to reside in a Member State before the end of the transition period and continue to reside there thereafter
- Union citizens who exercised their right as frontier workers in the UK before the end of the transition period and continue to do so thereafter
- UK nationals who exercised their right as frontier workers in one or more Member States before the end of the transition period and continue to do so thereafter