

Freedom of movement, British citizens and Brexit

April 2018, a British in Europe initiative

What is freedom of movement?

Put simply, free movement is your right - as an EU citizen - to move around freely and reside in any EU member state. This means that your residence in your host EU country comes under EU law and not under local immigration policies, and you have the right to

- move to another EU country to live;
- work as an employee or self-employed;
- run a business; and also
- provide services cross-border and to mutual recognition of your professional qualifications.

Free movement of people is one of the 'four freedoms' guaranteed by membership of the EU. The other three are freedom of goods, freedom of capital and freedom of services.

The ability to move and reside freely is a right. But it is regulated and there are conditions that must be fulfilled, even as an EU citizen. These are implemented to a greater or lesser degree across the different EU countries, but the same regulations apply throughout the EU.

Exercising free movement rights

Article 21 of the Treaty on the Functioning of the European Union (TFEU) and the Directive that stems from it give you the right, subject to certain conditions, to go to another EU country to do one or more of these four things:

- to work;
- to enter into self-employment or self-establishment (run a company);
- to live self-sufficiently (living on your own resources, whether retired or other); and
- to study.

All EU citizens *have* the right of free movement, but only those who have actually *used* the right are deemed to be *exercising* it. EU law (and the draft withdrawal agreement) differentiates between those who have exercised their right to free movement and those who haven't. You'll hear this referred to as '*exercising free movement rights*' or '*exercising treaty rights*' (they're the same thing).

This is important, as only people who are exercising free movement rights at the 'effective date' of the withdrawal agreement (31 December 2020) will be covered by the agreement.

For example, if you are a UK citizen living in another EU country under one of the circumstances above, provided you meet the conditions you are exercising free movement rights and therefore are making use of EU law.

If you *haven't* moved to another EU country, though, you will not usually be *exercising* your treaty rights and therefore cannot usually make use of EU law.

You are not deemed to be exercising free movement rights simply by

- going on holiday to another EU country, or
- travelling in an EU country for short stays of less than 90 days, or
- spending periods of less than 90 days at a time in a second home in an EU country.

If you have a house in an EU country but have not established residence there before 31 December 2020, you will not be covered by the withdrawal agreement as you are not exercising free movement rights. If you subsequently decide to move permanently, you would do so as a Third Country National, which is a more complex and demanding process with stricter conditions.

*The rest of this briefing relates to those UK citizens who are **resident** in the EU and are already exercising free movement rights or who will be doing so before 31 December 2020.*

Freedom of movement after Brexit

The draft Withdrawal Agreement does NOT include the continued right of British citizens living in the EU to freedom of movement: instead, *our protected rights are only valid in the state in which we're resident on 31 December 2020.*

If nothing changes, what this means is that from 1 January 2021, even though we're part of the group protected by the Withdrawal Agreement, we would *lose our right to move freely* to another EU country to live or work or to provide cross-border services outside our county of residence. We would also lose the right to have our professional or academic qualifications recognised across the EU27. For many people there could be significant repercussions:

- If your work currently takes you to another, or various other, EU countries and you don't fall into the narrow definition of a 'frontier worker', your life would change dramatically and in a worst case scenario you could lose your livelihood.
- If you currently provide cross-border services – for example, as a translator or a tour guide – you would no longer be able to do so.
- If you want to apply for a job in another EU country in future you could find yourself facing new hurdles.
- If you simply want to move on to another EU country to experience life there, or benefit from a warmer climate for health reasons, or move closer to family or friends, you could find yourself barred by stricter and more difficult residence rules and income requirements.

Does this mean that we'll be 'landlocked' – confined to the country we're living in at Brexit?

Yes ... and no. it's complicated.

When the UK leaves the EU, we would become third country nationals (TCNs) – this is the legal term for citizens of non-EU countries. There is a bundle of EU law covering third country nationals, who

have some rights of residence in and movement across the EU27, although these are limited compared to those we currently enjoy as EU citizens (see below). It has been suggested by the EU that where the Withdrawal Agreement doesn't provide for certain rights (for example, free movement), we can simply fall back on the EU law that covers third country nationals.

Free movement rights and third country nationals

The first point to make is that **only** third country nationals who have been resident in their host state for 5 years or more *and* hold a Long Term Residence Permit have free movement rights.

The Long Term Residence Permit is the equivalent of the Permanent Residence card for EU citizens, although the rights it confers are more restricted than those held by EU citizens with permanent residence rights.

Long term residence rights are not automatic – they have to be applied for, and to apply you must show that you have 'stable and regular resources' that are sufficient to provide for yourself and your family without recourse to public funds. These income criteria are often higher than those in the same state for EU citizens.

You also need to demonstrate that you have health insurance 'in respect of all risks normally covered for nationals of the state of residence'.

EU states are allowed to apply national legislation in parallel to the EU law on third country nationals, which can mean significant differences between countries (for example, in the income criteria for 'stable and regular resources', which vary widely across the EU). Most states also apply national integration conditions, for example language ability at a certain level. And unlike permanent residence for EU citizens, long term residence rights are lost after an absence of 12 months.

What free movement rights do third country nationals have?

As a third country national with a Long Term Residence Permit, you would have the right to reside in another EU country for the purpose of

- economic activity as an employed or self-employed person;
- study or vocational training; or
- other purposes (for example, retirement).

You would need, in your new host country, to provide the same evidence of stable and regular resources and health insurance, and you'd be subject to your new country's integration conditions.

If you were moving to work, you would almost certainly need authorisation from your new state of residence, which is entitled also to apply its own labour market policy (for example, applying quotas for certain jobs). And you'd be excluded from providing cross-border services.

As you can see, although you'd have some free movement rights as a third country national with long term residence, those rights would be much more limited than those we currently have -and for many would restrict or curtail their ability to move to or work in another state.

Travelling as a third country national after Brexit

If your main interest is in *travelling* to other Schengen countries for short periods rather than moving to another country, you will still be able to do this as a third country national living in the EU after Brexit even if we as UK citizens lose our current rights to free movement. But once again, there are restrictions.

As a third country national, you can spend *90 days elsewhere in the Schengen area in any 180 day period*. The 180 day countdown begins on the day you arrive in another Schengen country.

For example, if you live in France and have a second home in Spain, you could spend January to March in Spain, but would then have to return to France for the period April to June. You could then go back to Spain for the period July to September before returning to France again from October to December. *But ...* you wouldn't be able to spend any time in any other Schengen country during that year – not even a quick weekend on a cheap Ryanair flight - as you'd have used up your whole allowance.

Your current rights as an EU citizen allow you, for example, to spend 3 months in Spain, then 3 months in Portugal, then 3 months in Italy, then 3 months in Germany ... and so on, all without returning to your country of residence.

But as a third country national without our present free movement rights, long-term travel like this would no longer be possible. You'd also need to keep a careful record of your travel dates in case you were stopped on a regular police or customs control.

So what does all this mean?

If you are happily settled in your current host country, don't work or provide services in other EU countries, don't intend or harbour any desire to move elsewhere in the EU in your lifetime, don't have or would like to have a second home elsewhere in the Schengen area, don't plan to travel for anything much more than an occasional two or three week holiday ...

... you may be one of the people for whom continuing free movement rights are not important.

But for many people, life without our current right to free movement would be infinitely poorer. And for some, it could be catastrophic.

British in Europe has argued, and continues to argue, that the EU is wrong in denying us our free movement rights, for two reasons. Firstly, because we consider that as a matter of law, these are existing EU rights; and secondly, because of their practical importance to us as UK citizens whose rights are protected by the Withdrawal Agreement.

We intend to continue a robust campaign over the next six months, because “nothing is agreed until everything is agreed”. If you value your free movement rights then please help us to do that. Your group will give you all the information you need to get involved; if you’re not in a group, then follow the British in Europe website for updates.