



## BRIEFING PAPER

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# Brexit: what impact on those currently exercising free movement rights?

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## Summary

For as long as the UK remains a Member State of the European Union, it is subject to laws guaranteeing EU citizens the right to free movement throughout the Union. British citizens will continue to enjoy EU citizenship until the UK exits the EU.

The latest available data suggests that in 2015 there were around 1.2 million British citizens living in other EU countries, compared with around 3.2 million EU citizens living in the UK.

### EU free movement rights

Free movement is central to the concept of EU citizenship. It is a right enjoyed by all citizens of the Union (those with nationality of any of the 28 Member States).

All EU citizens have a right to reside in another EU Member State for up to three months without any conditions other than the requirement to hold a valid identity card or passport. After three months certain conditions apply, varying according to the status of the EU citizen (eg whether they are a worker or a student etc). Those who opt to exercise their free movement rights are protected against discrimination in employment on the grounds of nationality. Provisions co-ordinating social security rules ensure citizens do not lose entitlements by working elsewhere in the Union.

EU citizens who have resided legally for a continuous period of five years in another EU Member State automatically acquire the right to permanent residence there. To qualify for permanent residence, students and the self-sufficient must possess comprehensive sickness insurance cover throughout the five year period. Confusingly, while EU citizens in the UK have access to NHS care, under UK law this does not satisfy the requirement to have comprehensive sickness insurance cover.

UK immigration law as it applies to non-EU citizens is significantly more restrictive.

### What was said during the referendum campaign?

The Government White Paper noted that if the UK left the EU, remaining Member States would no longer be required to maintain the rights currently enjoyed by British citizens living in those states. Securing these rights would likely require the offer of reciprocal protection for EU citizens in the UK.

Both the Vote Leave and Leave.EU campaigns claimed the status of EU citizens lawfully resident in the UK would be unaffected as a result of Brexit.

### What has been said since the referendum?

The Government immediately sought to reassure EU citizens in the UK that there was no change in their status as a result of the vote to leave.

In the months following the referendum ministers reiterated that the Government wants to protect EU citizens' status. The only scenario in which such an outcome would be impossible, they said, is if British citizens' rights in remaining EU Member States are not protected in return. Despite this, the Government has faced accusations of treating EU nationals as 'bargaining chips' in the negotiations with the European Commission.

In the past 12 months the issue of the status and rights of EU citizens in the UK after Brexit was the subject of two Opposition Day Debates and three select committee reports. It was debated at length during the passage of the *Withdrawal from the European Union*

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*(Article 50) Act 2017*. This Parliamentary comment is summarised in section 6 of this briefing paper.

##### **The Government's proposals on citizens' rights post-Brexit**

On 26 June 2017 the Government published a White Paper setting out its proposals for the status and rights of EU citizens in the UK after the UK's exit from the EU. Under the Government's plan, all EU citizens present in the UK before a cut-off date and with five years continuous residence in the UK may apply for a new 'settled status' - akin to 'indefinite leave to remain' in UK immigration law. The cut-off date will be no earlier than 29 March 2017 (the date the Article 50 process was started) and no later than the date of the UK's exit from the EU. EU citizens in the UK before the cut-off date but without five years continuous residence in the UK can apply for a 'temporary status' in order to remain in the UK long enough to accumulate five years continuous residence, at which point they may apply for settled status.

Whilst the proposals appear to render permanent residence rights largely redundant, the Government confirmed that it will not seek proof of comprehensive sickness insurance cover from those applying for settled status.

The proposals, described as "generous" and a "fair and serious offer" by the Prime Minister, were met with criticism. European leaders said they left many questions unanswered. The campaign groups the3million and British in Europe warned of a lack of detail on how the Government will protect the rights of British citizens in the remaining EU Member States. The Labour party described the proposals as being 'too little, too late'. The SNP criticised the government for failing to unilaterally guarantee EU citizens' rights in the UK.

##### **Polling data**

Polls conducted since the referendum have all shown high levels of support for protecting the status of EU citizens lawfully resident in the UK.

# 1. Migration between the UK and other EU countries

How many other EU citizens are living in the UK, and how does this compare with the number of British citizens living in other EU Member States?

The latest available data suggests that in **2015** there were around **1.2 million** British citizens living in other EU countries, compared with around **3.2 million** EU citizens living in the UK.

## 1.1 EU migrants living in the UK

### 2011 Census estimates

The most accurate source of data on the UK population is the decennial Census. The most recent Census results showed that in March 2011 there were **2.68 million** people born in other EU countries living in the UK.<sup>1</sup> This estimate covers all countries that were EU Member States in 2011, so it does not include a small number of people born in Croatia, which joined the EU in July 2013.

The 2011 Census offers the most accurate source of data on the UK population

It is important to understand that in this context “living in the UK” means the usually resident population of the UK, which are those people who on Census day were in the UK and had stayed or intended to stay for twelve months or more, or who had a UK address but were living abroad for less than twelve months.

In measuring the migrant population, the Census asked people about their country of birth and not their nationality. The Census questionnaires in England, Wales and Northern Ireland did ask respondents about passports they held, and this can be used as a proxy for nationality, but the question on passports was not asked in Scotland.

### Labour Force Survey estimates

The most recent estimates of the EU migrant population of the UK are available from the Labour Force Survey, and are published in an Office of National Statistics (ONS) annual statistical release on ‘Population by Country of Birth and Nationality’. According to these figures, in 2015 there were around **3.18 million** people born in other EU countries living in the UK, and around **3.16 million** people who were nationals of other EU countries living in the UK.<sup>2</sup>

The Labour Force Survey offers the best estimate of the EU migrant population of the UK

These estimates are based on the quarterly Labour Force Survey (LFS) and its annualised equivalent, the Annual Population Survey (APS). These surveys are designed to represent the usually resident household population of the UK, excluding some people in communal establishments.

One feature of the LFS is that respondents do not need to be usually resident at the time they complete the survey. However, the sample is

<sup>1</sup> ONS, [2011 Census, Key Statistics and Quick Statistics for local authorities in the United Kingdom - Part 1](#), Table QS203UK

<sup>2</sup> ONS, [Population by Country of Birth and Nationality, 2015](#), Tables 1.1 and 2.1

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weighted up to represent just the usually resident population. In that sense LFS estimates do not reflect short-term migration.

### 1.2 British citizens living in other EU countries

The most up to date and comprehensive estimates of the number of British migrants living in other EU countries are published in the United Nations Global Migration Database.

According to this data, there were an estimated **1.22 million** British migrants living in other EU countries in 2015.<sup>3</sup>

The United Nations dataset is based on estimates from national censuses and population surveys, which are rolled forward to account for population growth among migrant stocks in years since the last available data.

One issue with the United Nations dataset is that, because different countries use different definitions of the migrant population in their official statistics, aggregating figures for migrants in different countries necessarily involves combining some figures that are not strictly comparable, mixing estimates based on country of birth with estimates based on nationality. This is an unavoidable limitation with using the dataset for this purpose.

The UN Global Migration Database offers the best estimate of the number of British citizens elsewhere in the EU

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<sup>3</sup> United Nations Global Migration Database, [International migrant stock by destination and origin](#), Table 16

## 2. The current, pre-Brexit position on free movement rights

For as long as the UK remains a EU Member State, it is subject to laws guaranteeing EU citizens the right to free movement throughout the Union. British citizens will continue to enjoy EU citizenship until the UK exits the EU.

### 2.1 EU 'Free movement' rights

The [right to move and reside freely](#) in another Member State is one of the rights enjoyed by all those with EU citizenship.<sup>4</sup> It is conferred directly on every EU citizen by Article 21 of the [Treaty on the Functioning of the European Union](#) (TFEU). It is also enjoyed by those non-EU citizens who hold Swiss citizenship or citizenship of states in the European Economic Area (Iceland, Norway and Liechtenstein).<sup>5</sup> For ease of reference all will be referred to as 'EU citizens' in this paper.

Free movement is central to the concept of EU citizenship

The right entitles EU citizens to reside on the territory of another EU Member State for up to three months without any conditions other than the requirement to hold a valid identity card or passport.<sup>6</sup> After three months certain conditions apply, depending on the status of the EU citizen. In order to have an ongoing "right to reside" an EU citizen must fit into one of the following categories:

- a worker or self-employed person<sup>7</sup>
- a job-seeker (a person who is seeking employment and has a genuine chance of being employed)
- a self-sufficient person
- a student
- a family member accompanying or joining an EU citizen who fits into one of the above categories.<sup>8</sup>

There may also be certain administrative formalities to be met.<sup>9</sup>

EU citizens who have resided legally for a continuous period of five years in another EU Member State acquire the right to permanent residence there. (See section 2.3 below for further details).

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<sup>4</sup> Any person who holds the nationality of an EU Member State is automatically also an EU citizen. EU citizenship is additional to nationality of a Member State and does not replace it.

<sup>5</sup> The European Economic Area (EEA) allows Iceland, Liechtenstein and Norway to be part of the EU's single market. Switzerland is neither an EU nor EEA member but is part of the single market.

<sup>6</sup> Directive 2004/38 of the European Parliament and of the Council, Article 6

<sup>7</sup> In certain circumstances, a person who is no longer working can retain "worker" or "self-employed" status - for example, if temporarily unable to work due to illness or accident, or due to involuntary unemployment: Directive 2004/38/EC, Article 7(3)

<sup>8</sup> A more limited range of relatives are eligible for a right of residence as the family member of a "student" than for the other categories: Directive 2004/38, Article 2(2), Article 7(4)

<sup>9</sup> Directive 2004/38, Article 7

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As well as conferring the freedom to move and reside freely throughout the EU under EU citizenship provisions, the TFEU specifies the free movement rights of workers and the self-employed.<sup>10</sup> This fundamental principle is supported by protections against discrimination in employment on the grounds of nationality and provisions co-ordinating social security rules so that citizens do not lose entitlements when they exercise their free movement rights in order to work elsewhere.

In practice, free movement law means that EU citizens do not require a visa in order to come to the UK. Those coming to the UK are not subject to rules on English language proficiency. The exclusion of an EU citizen must be justified on the grounds of public policy, public security or public health.

### 2.2 Immigration controls for non-EU nationals

The comparable provisions for non-EU citizens, including those who are family members of British citizens, are specified in the UK's [Immigration Rules](#) and are significantly more restrictive.

For example, opportunities for non-EU citizens to come to work in the UK under the [points-based system](#) are generally restricted to skilled migrants who already have a job offer. To secure a visa, non-EU citizen spouses of British citizens must satisfy various eligibility criteria, including a requirement their British partner has an annual income of at least £18,600 (or a higher amount in savings). Most non-EU visa categories require that applicants have some proficiency in the English language, and initially grant only a temporary permission to stay in the UK. The scope to extend the permission, to switch to a different immigration category or to stay in the UK permanently, varies depending on the visa category.

As the UK's Immigration Rules have become more restrictive the contrast between EU free movement rights and visa restrictions for non-EU citizens has become more striking. The UK and its fellow EU Member States recognised the potential for exploitation of EU free movement law, for example, through 'sham marriages' between EU citizens and non-EU nationals who would otherwise struggle to qualify for entry under national immigration legislation. The proposed '[new settlement for the United Kingdom within the European Union](#)' offered by the European Council in February 2016 included restrictions on freedom of movement so as to make non-EU family members subject to a host Member State's national immigration laws.<sup>11</sup> However these measures will not come into force due to the outcome of the referendum.

The Immigration Rules impose significantly more restrictive conditions on non-EU migration

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<sup>10</sup> Articles 45-48 TFEU and Articles 49-53 TFEU respectively

<sup>11</sup> European Council, *European Council meeting (18 and 19 February 2016) Conclusions*, 19 February 2016

## 2.3 The EU law right of permanent residence

EU citizens who reside legally for a continuous period of five years in a Member State other than their own acquire the right of permanent residence in their host state. This right is acquired automatically. Citizens do not need to apply for it. Once acquired, the right of permanent residence is lost only through an absence from the host Member State for a period exceeding two consecutive years.<sup>12</sup>

EU citizens with five years of lawful residence in a host Member State do not need to apply for permanent residence

Permanent residence is provided for by Directive 2004/38 - often referred to as the "Citizens Rights Directive" or the "Free Movement Directive" - and transposed into UK law by the [Immigration \(European Economic Area\) Regulations 2016](#).<sup>13</sup>

### Comprehensive sickness insurance cover

Those who are students or self-sufficient must meet a further requirement of possessing comprehensive sickness insurance cover in their host Member State (a condition to ensure the 'economically inactive' do not become a burden on their host state). Without such cover, any student or self-sufficient person will not be deemed to be exercising their Treaty rights. Therefore such periods of time without comprehensive sickness insurance will not count towards the five years of lawful residence necessary to acquire permanent residence.

Certain categories of EU citizens in the UK require sickness insurance in order to exercise their Treaty rights

Whilst EU citizens in the UK have access to the NHS, this does not count as having comprehensive sickness insurance cover. The Home Office view that entitlement to NHS treatment is insufficient to meet the requirement of the Directive was upheld by the Court of Appeal in 2014.<sup>14</sup> There is [Home Office guidance](#) on what forms of insurance satisfy the requirement.<sup>15</sup>

Access to the NHS does not count as having sickness insurance

The UK requires family members of EU citizen students and self-sufficient people to have their own, separate comprehensive sickness insurance cover.

### Applications following the referendum

The referendum result prompted a surge in applications by EU citizens for proof of their right to permanent residence in the UK. On various occasions ministers indicated that the Government would recognise the residence rights of those who had acquired permanent residence.<sup>16</sup> For many applicants, the process was the first time they became aware of the need to have comprehensive sickness insurance cover, or that access to NHS care did not suffice.<sup>17</sup>

<sup>12</sup> Directive 2004/38 of the European Parliament and of the Council, article 16

<sup>13</sup> These Regulations revoked and replaced the *Immigration (European Economic Area) Regulations 2006* on 1 February 2017

<sup>14</sup> [Ahmad v Secretary of State for the Home Department \[2014\] EWCA Civ 988](#) (paragraphs 70 and 71)

<sup>15</sup> Home Office, [European Economic Area nationals: qualified persons](#), 1 February 2017, pages 30-38

<sup>16</sup> See, for example: [HC Deb 6 July 2016 c948](#), [HC Deb 10 October 2016 c47](#), [HC Deb 1 December 2016 c1662](#)

<sup>17</sup> See, for example, ['Dutchwoman resident in UK for 30 years may have to leave after Brexit'](#), *the Guardian*, 14 January 2017

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The Government faced calls to scrap this requirement. In December 2016 Sarah Wollaston, chair of the Health Select Committee, warned of a “bureaucratic nightmare” facing EU citizens seeking certainty as to their status in the UK and urged the Government to ensure that EU citizens in the UK will not be disqualified from permanent residency on the grounds of lacking insurance cover.<sup>18</sup>

On 7 March 2017 the *Guardian* reported a change in Home Office statements on the issue, claiming it had offered a ‘categorical assurance’ not to deport EU students:

“EU citizens will not be removed from the UK or refused entry solely because they do not have comprehensive sickness insurance,” said a spokesman.<sup>19</sup>

On his *Free Movement* blog barrister Colin Yeo pointed out that the reported statement fell short of a promise to recognise a right of permanent residence for a self-sufficient person or student who did not have comprehensive sickness insurance. He also queried the basis on which the Home Office could dismiss the requirement as a ‘technicality’ that could be overlooked in certain cases.<sup>20</sup>

In an answer to a Parliamentary Question tabled later that month, the Government denied there has been any change in its approach. It reiterated that EU citizens who are self-sufficient or students must hold comprehensive sickness insurance cover in order to be lawfully resident and to qualify for a right to reside. However it went further and referred to a ‘longstanding Home Office practice’ not to seek the removal of EU citizens solely because they do not have comprehensive sickness insurance:

In March 2017 the Government referred to a ‘longstanding practice’ not to remove EU citizens solely because they do not have insurance

**Asked by Baroness Lister of Burtersett:** To ask Her Majesty’s Government, further to the Written Answer by Baroness Williams of Trafford on 28 February (HL5522), whether they intend to remove from the UK those EU citizens who are residing in the UK otherwise than in accordance with the Free Movement Directive.

**Answered by Baroness Williams of Trafford:** Under EU law, EU nationals who wish to stay in the UK for longer than three months can only do so if they are exercising a Treaty right. This means that they must be a jobseeker, worker, self-employed, self-sufficient or a student. The Free Movement Directive (2004/38/EC) requires students and self-sufficient persons to have comprehensive sickness insurance and sufficient resources to support themselves and their families to not become a burden on the UK’s social assistance system.

At present the UK remains in the EU, and as such, EU nationals continue to be subject to the rights and responsibilities set out in existing legislation which governs the exercise of free movement in the UK. EU nationals that do not meet the requirements of the Free Movement Directive are not lawfully resident in the UK and may be liable to removal.

<sup>18</sup> [‘Scrap insurance rule for stay-at-home parents from EU, says Tory MP’](#), *the Guardian*, 30 December 2016

<sup>19</sup> [‘EU students told health insurance ‘a technicality’ after German woman threatened with removal’](#), *the Guardian*, 7 March 2017

<sup>20</sup> *Free Movement*, [‘Home Office now says health insurance ‘just a technicality’](#), 8 March 2017

However, because it is relatively straight forward to rectify and establish a right to reside in the UK, longstanding Home Office practice is not to seek the removal of EU nationals solely because they do not have comprehensive sickness insurance but have otherwise met the requirements under EU law.<sup>21</sup>

As Colin Yeo stated in a separate blog post, the implication was that the Government expected those EU citizens without comprehensive sickness insurance cover to 'rectify' their situation.<sup>22</sup>

However on 26 June 2017 the Government published a White Paper setting out its proposals for the post-Brexit status of EU citizens in the UK.<sup>23</sup> In a departure from earlier statements by ministers in the House, it proposed that all EU citizens in the UK must apply for 'settled status' - even those who have acquired the right of permanent residence under existing free movement laws. The proposals state the Government will not demand that applicants for settled status show evidence of having had comprehensive sickness insurance cover. The Government's proposals are set out in greater detail in section 5 of this briefing paper.

The Government's June 2017 White Paper suggests permanent residence documents will be of little value

Sickness insurance will not be required

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<sup>21</sup> PQ HL5917, 27 March 2017

<sup>22</sup> *Free Movement*, '[Home Office say it is "longstanding practice" not to remove EU citizens lacking comprehensive sickness insurance](#)', 28 March 2017

<sup>23</sup> HM Government, [The United Kingdom's Exit from the European Union: safeguarding the position of EU citizens living in the UK and UK nationals living in the EU](#), 26 June 2017, Cm 9464

### 3. What was said during the referendum campaign?

#### The Government White Paper

In its White Paper the Government suggested that any agreement protecting the rights of British citizens living and working in EU Member States would likely include reciprocal protection for EU citizens remaining in the UK:

4.2 [*The approximately 2 million UK citizens living, working and travelling in the other 27 Member States of the EU*] all currently enjoy a range of specific rights to live, to work and access to pensions, health care and public services that are only guaranteed because of EU law. There would be no requirement under EU law for these rights to be maintained if the UK left the EU. Should an agreement be reached to maintain these rights, the expectation must be that this would have to be reciprocated for EU citizens in the UK.

5.9 Many UK citizens would want any negotiations to secure their continued right to work, reside and own property in other EU states, and to access public services such as medical treatment in those states. UK citizens resident abroad, among them those who have retired to Spain, would not be able to assume that these rights will be guaranteed. At the very least, any terms which the UK seeks for its own citizens would have to be offered to EU citizens wishing to come to or stay in this country.<sup>24</sup>

#### The Vote Leave campaign

The Vote Leave campaign denied the rights of EU nationals in the UK would be affected by Brexit. In a statement by Michael Gove, Boris Johnson, Priti Patel and Gisela Stuart, the campaign stated:

...there will be no change for EU citizens already lawfully resident in the UK. These EU citizens will automatically be granted indefinite leave to remain in the UK and will be treated no less favourably than they are at present.<sup>25</sup>

Gisela Stuart, the chair of the Vote Leave campaign, also argued the Vienna Convention on the Law of Treaties guarantees the acquired rights of EU nationals in the UK and of British citizens elsewhere in the EU.<sup>26</sup>

#### The Leave.EU campaign

The Leave.EU campaign stated "the EU would be obliged to grant permanent settlement rights to Britons living in Ireland and mainland Europe. The UK would do the same."<sup>27</sup>

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<sup>24</sup> HM Government, [The process for withdrawing from the European Union](#), February 2016, Cm 9216

<sup>25</sup> Vote Leave, [Restoring public trust in immigration policy - a points-based non-discriminatory immigration system](#), 1 June 2016

<sup>26</sup> 'EU citizens in UK face Brexit uncertainty', *Guardian*, 15 May 2016. See section 5.2 of this paper for the analysis of the Lord's EU Committee on this question.

<sup>27</sup> <http://leave.eu/en/faqs> (page removed; last accessed on 19 January 2017)

## 4. The Government position since the referendum

### 4.1 Immediate reaction

In his statement outside 10 Downing Street on the morning of 24 June David Cameron addressed British citizens living elsewhere in Europe and EU nationals in the UK:

I would also reassure Brits living in European countries, and European citizens living here, that there will be no immediate changes in your circumstances. There will be no initial change in the way our people can travel, in the way our goods can move or the way our services can be sold.<sup>28</sup>

Boris Johnson denied the result was due to concerns about immigration and said the status of EU nationals would not change:

I've seen a lot of confusion over the weekend about the status of people living in this country. It's absolutely clear that people from other European countries who are living here have their rights protected.<sup>29</sup>

### 4.2 The Government's statement following the referendum

Following the referendum the Government made a statement on 11 July 2016 on the status of other EU citizens in the UK:

There has been no change to the rights and status of EU nationals in the UK, and UK nationals in the EU, as a result of the referendum.

The decision about when to trigger Article 50 and start the formal process of leaving the EU will be for the new Prime Minister. The UK remains a member of the EU throughout this process, and until Article 50 negotiations have concluded.

When we do leave the EU, we fully expect that the legal status of EU nationals living in the UK, and that of [UK nationals in EU member states](#), will be properly protected.

The government recognises and values the important contribution made by EU and other non-UK citizens who work, study and live in the UK.

#### **I have lived in the UK for more than 5 years. What does the vote to leave the EU mean for me?**

EU nationals who have lived continuously and lawfully in the UK for at least 5 years automatically have a permanent right to reside. This means that they have a right to live in the UK permanently, in accordance with EU law. There is no requirement to register for documentation to confirm this status.

EU nationals who have lived continuously and lawfully in the UK for at least 6 years are eligible to apply for British citizenship if

The Government reminded EU citizens of the automatic right of permanent residence

<sup>28</sup> 10 Downing Street, [EU referendum outcome: PM statement](#), 24 June 2016

<sup>29</sup> ["PROJECT FEAR IS OVER" Boris welcomes ceasefire with Osborne after saying Brexit 'was NOT about immigration'](#), *The Sun*, 27 June 2016

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they would like to do so. The eligibility requirements can be found [here](#).

### **What if I have lived in the UK for less than 5 years?**

EU nationals continue to have a right to reside in the UK in accordance with EU law. EU nationals do not need to register for any documentation in order to enjoy their free movement rights and responsibilities. For those that decide to apply for a registration certificate, there has been no change to government policy or processes. Applications will continue to be processed as usual.

Non-EU family members of EU nationals must continue to apply for a family permit if they wish to enter the UK under EU law, and they do not have a residence card issued by a member state. There has been no change to government policy or processes, and applications will continue to be processed as usual.

Extended family members of EU nationals must continue to apply for a registration certificate (if they are an EU national) or residence card (if they are a non-EU national) if they wish to reside in the UK. There has been no change to government policy or processes, and applications will continue to be processed as usual.

Irish nationals enjoy separate rights, under various pieces of legislation, which allow Irish nationals residing in the UK to be treated in the same way as British nationals in most circumstances. There is no change to this position.

Croatian nationals might continue to need to apply for a registration certificate to be allowed to work in the UK under the transitional arrangements that were put in place when Croatia joined the EU in 2013. The type of registration certificate that they might need will depend on whether they need permission to work in the UK, and what they will be doing. There has been no change to government policy or processes, and applications will continue to be processed as usual.

Irish citizens have rights separate to those of other EU citizens in the UK

### **Does the government plan to remove EU nationals from the UK?**

There has been no change to the right of EU nationals to reside in the UK and therefore no change to the circumstances in which someone could be removed from the UK.

As was the case before the referendum, EU nationals can only be removed from the UK if they are considered to pose a genuine, present and sufficiently serious threat to the public, if they are not lawfully resident or are abusing their free movement rights.

## 4.3 Response to Opposition day debates

Speaking for the Government at the outset of an Opposition Day Debate moved by Andy Burnham on 6 July 2016, then Immigration Minister James Brokenshire echoed Mr Burnham in saying that other EU citizens living and working in the UK are valued and welcome here. He condemned the rise in incidents of hate crime and racial abuse since the referendum and rejected the accusation levied by some members of the House that the Government sees EU citizens as bargaining chips. He clarified the Government's approach to the question:

We will look to secure a fair deal for EU citizens, as we secure a fair deal for British citizens in the EU. That is the responsible

approach, and that is what we will do. We want to be able to guarantee the legal status of EU nationals who are living in the UK and I am confident we will be able to do just that. We must also win the same rights for British nationals living in European countries and it will be an early objective for the Government to achieve those things together. As the Prime Minister and the Home Secretary have made clear and as I stated on Monday, there will in any event be no immediate changes in the circumstances of EU nationals in the UK. Currently, they can continue to enter and live in the UK as they have been doing.<sup>30</sup>

...

It must also be recognised that, as well as working to protect the rights of EU nationals in the UK, the Government have a duty to protect the rights of UK nationals who currently reside in countries throughout the EU. Just as EU nationals are making a tremendous contribution to life in the United Kingdom, UK nationals are contributing to the economies and societies of the countries that belong to the EU.<sup>31</sup>

James Brokenshire emphasised that many EU citizens had acquired the right of permanent residence in the UK:

It is important to put on record that those who have been continuously lawfully resident in the UK for five years qualify for permanent residence. It is an important point for those who have raised points about constituents and family members who have been in this country for a long time that those rights already exist, so they should have no fear about that. There is no current requirement for such people to apply for documentation from the Home Office to acquire this status.<sup>32</sup>

Ministers stressed that many EU citizens have acquired the right of permanent residence

This point was made on subsequent occasions by the Secretary of State for Exiting the European Union, David Davis. Following his statement on 10 October 2016, he told the House:

People should not worry people unnecessarily or get them concerned. Bear in mind, five out of six migrants who are here either already have indefinite leave to remain or will have it by the time we depart the Union.<sup>33</sup>

In an answer to a Parliamentary Question on 1 December 2016 the Minister said:

As I said last time—I hope this gets promulgated—the majority of European nationals already have the right indefinitely to remain because of the time they have been here, or if they have been here for two and a half years, they will certainly have that before we leave.<sup>34</sup>

Speaking for the Government at a second Opposition Day Debate on the issue, moved by Joanna Cherry on 19 October 2016, the then Immigration Minister Robert Goodwill again tied the future rights of those EU citizens presently in the UK to the post-Brexit status of British expatriates in EU Member States:

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<sup>30</sup> HC Deb 6 July 2016 c947-948

<sup>31</sup> HC Deb 6 July 2016 c950

<sup>32</sup> HC Deb 6 July 2016 c948

<sup>33</sup> HC Deb 10 October 2016 c47

<sup>34</sup> HC Deb 1 December 2016 c1662

## 16 Brexit: what impact on those currently exercising free movement rights?

The Government have been clear that they want to protect the status of EU nationals resident in the UK. As the Prime Minister has made clear, the only circumstances in which that would not be possible were if British citizens' rights in other EU member states are not protected in return. The Government have provided repeat assurances on this point, and their position has not changed.<sup>35</sup>

[...]

The only problem that the Government have with the motion is that it does not go far enough, in that it does not include the rights of British citizens living in other EU member states, which we would demand to be protected in return. It is impossible for us to support the motion, because that reassurance is not contained in it.

I fully appreciate the importance of giving certainty to EU citizens who have built a life here in the United Kingdom. As I have already said, they should be reassured that we are working on the basis that we want to protect those people's status in UK law beyond the point at which we leave the EU.

### 4.4 Prime Minister's Lancaster House speech

In her Lancaster House speech of 17 January 2016, the Prime Minister reiterated her wish to 'guarantee' the right of EU citizens in the UK if there is a reciprocal deal for British citizens living elsewhere in Europe:

Fairness demands that we deal with another issue as soon as possible too. We want to guarantee the rights of EU citizens who are already living in Britain, and the rights of British nationals in other member states, as early as we can.

I have told other EU leaders that we could give people the certainty they want straight away, and reach such a deal now.

Many of them favour such an agreement - 1 or 2 others do not - but I want everyone to know that it remains an important priority for Britain - and for many other member states - to resolve this challenge as soon as possible. Because it is the right and fair thing to do.<sup>36</sup>

Theresa May suggested that some EU leaders opposed a reciprocal agreement

### 4.5 Brexit White Paper

In its White Paper of 2 February 2017, '[The United Kingdom's exit from and new partnership with the European Union](#)', the Government stated:

6.3 Securing the status of, and providing certainty to, EU nationals already in the UK and to UK nationals in the EU is one of this Government's early priorities for the forthcoming negotiations. To this end, we have engaged a range of stakeholders, including expatriate groups, to ensure we understand the priorities of UK nationals living in EU countries. This is part of our preparations for a smooth and orderly withdrawal and we will continue to work closely with a range of organisations and individuals to achieve this. For example, we recognise the priority placed on easy access to healthcare by UK nationals living in the EU. We are also engaging closely with EU Member States, businesses and other

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<sup>35</sup> HC Deb 19 October 2016 c834

<sup>36</sup> 10 Downing Street, [The government's negotiating objectives for exiting the EU: PM speech](#), 17 January 2017

organisations to ensure that we have a thorough understanding of issues concerning the status of EU nationals in the UK.

6.4 The Government would have liked to resolve this issue ahead of the formal negotiations. And although many EU Member States favour such an agreement, this has not proven possible. The UK remains ready to give people the certainty they want and reach a reciprocal deal with our European partners at the earliest opportunity. It is the right and fair thing to do.

## 4.6 Home Secretary's letter to peers

During the passage through Parliament of the *European Union (Notification of Withdrawal) Act 2017*, the Home Secretary Amber Rudd wrote to every peer in the House of Lords ahead of the Lords committee stage urging them not to amend the Bill. According to press reports she told peers that the Government “fully appreciates” concerns over the rights of migrants from elsewhere in the EU and sought to offer reassurance that they would be treated with the “utmost respect”. The *Telegraph* reported that Ms Rudd blames a number of other EU Member States for the failure thus far to achieve an agreement securing the residence rights of EU nationals in the UK and British citizens elsewhere in Europe. It said she warned peers that guaranteeing the rights of EU citizens before any such agreement would leave British citizens living in the EU facing two years of uncertainty.<sup>37</sup>

## 4.7 Prime Minister's “fair and serious” offer at Brussels summit

At a European Council summit in Brussels on 22 June 2017 the Prime Minister told other EU leaders of how her Government proposes to secure the status of other EU citizens resident in the UK. Describing the offer as “fair and serious”, Mrs May explained that no EU citizens living lawfully in the UK on the day it leaves the EU would be asked to leave, nor would Brexit require families to be split up.<sup>38</sup> The details were set out in a White Paper published on 26 June. They are summarised in the following section.

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<sup>37</sup> [‘Home Secretary writes to every peer urging them not to defeat the Government over Brexit bill’](#), *the Telegraph*, 28 February 2017

<sup>38</sup> ‘Theresa May offers to allow EU citizens to stay in UK post-Brexit’, *Financial Times*, 22 June 2017

## 5. The Government's 'fair and serious offer'

On 26 June 2017 the Government published its White Paper [\*The United Kingdom's exit from the European Union: safeguarding the position of EU citizens living in the UK and UK nationals living in the EU\*](#). In a statement to the House of Commons, the Prime Minister described its proposed terms as a "fair and serious offer" to EU citizens in the UK.

### 5.1 A summary of the Government's proposals

- EU citizens who meet the requirements below will be given a new '**settled status**' - akin to 'indefinite leave to remain' in UK immigration law;
- A **cut-off date** will be set - this 'specified date' will be no earlier than 29 March 2017 (the date the Article 50 process was started) and no later than the date of the UK's exit from the EU;
- EU citizens in the UK before the cut-off date and with **five years** continuous residence in the UK may apply for this new settled status;
- EU citizens in the UK before the cut-off date but without five years continuous residence in the UK can apply for a '**temporary status**' in order to remain in the UK long enough to accumulate five years continuous residence, at which point they may apply for settled status;
- EU citizens who move to the UK after the cut-off date may remain during a **grace period** - likely to be the two years after the date of the UK's exit - but residence beyond that point will depend on their meeting whatever UK law applies at the time;
- Family dependants who join a qualifying EU citizen relative in the UK before the date on which the UK leaves the EU will be able to apply for settled status once they have accumulated five years residence (even if they arrived after the cut-off date);
- Family dependants who wish to join a EU relative in the UK after the UK's exit from the EU will be subject to the same rules as those seeking to join British citizens (or alternatively subject to post-Brexit arrangements for EU citizens who arrived after the cut-off date, yet to be announced);
- Serious or persistent criminals and those considered a threat to the UK will be excluded;
- The rights of EU citizens in the UK post-Brexit will be enforceable in the UK legal system and the Court of Justice of the European Union will have no jurisdiction in the UK.

A cut-off date, still to be decided, will apply

The Government wants to ensure there is no 'cliff edge' on the day the UK leaves the EU; EU citizens resident in the UK on that day will not suddenly find themselves residing here unlawfully. The proposals also

confirmed that the Government will not treat citizens of one EU Member State differently to those of another.

The White Paper also set out the Government's intentions in relation to benefits, pensions, healthcare and economic rights:

- EU citizens with settled status will have access to UK benefits on the same basis as a comparable British citizen under domestic law;
- Those EU citizens with temporary status will be able to access the same benefits they can access now (broadly, equal access for those in work and limited access for those not working);
- Existing rules on exporting benefits (eg child benefit) from the UK to other EU Member States will be protected for those exporting benefits on the cut-off date (subject to ongoing entitlement);
- The UK will continue to export and uprate the UK state pension within the EU;
- Periods of relevant insurance, work or residence within the EU accrued before the UK's exit will continue to be aggregated so as to meet entitlement conditions for UK contributory benefits and the state pension;
- The Government hopes to secure an agreement protecting healthcare arrangements for all EU citizens in the UK and British citizens in other EU Member States before the cut-off date, and will seek an ongoing arrangement akin to the EHIC scheme;
- EU citizen students in the UK before the cut-off date and those enrolled on courses commencing in 2017/18 and 2018/19 will continue to be eligible for student support and home fee status.

## 5.2 The response in Europe

The immediate response of European leaders was described as 'cool'.<sup>39</sup> Speaking after the European Council meetings on 22 and 23 June, Council President Donald Tusk stated:

We want to ensure the full rights for EU and UK citizens after Brexit. My first impression is that the UK's offer is below our expectations, and that it risks worsening the situation of citizens. But it will be for our negotiating team to analyse the offer line by line, once we receive it on paper.<sup>40</sup>

The *Telegraph* reported that other leaders were 'lukewarm'. Both European Commission President Jean-Claude Juncker and Austrian Chancellor Christian Kern described the offer as a "first step", but one that was insufficient. German Chancellor Angela Merkel called it a "good start" but cautioned "many, many other issues" need to be resolved. Dutch Prime Minister Mark Rutte also claimed that there remains "thousands of questions to ask". Belgian leader Charles Michel described Mrs May's offer as "particularly vague".<sup>41</sup>

European leaders said the offer left many questions unanswered

<sup>39</sup> 'Theresa May's offer on EU citizen rights falls flat', *Financial Times*, 23 June 2017

<sup>40</sup> European Council press release, '[Remarks by President Donald Tusk after the European Council meetings on 22 and 23 June 2017](#)', 23 June 2017

<sup>41</sup> 'Theresa May forced to defend EU citizens offer as European leaders warn it falls 'below our expectations'', *Telegraph*, 23 June 2017

Writing in the *Guardian*, Guy Verhofstadt, chair of the European Parliament's Brexit steering group, called the Government's proposals a 'damp squib'. He warned the European Parliament would withhold its consent from any agreement that would treat EU citizens less favourably than they are at present.<sup>42</sup>

### Box 1: What does the EU want for British and EU citizens post-Brexit?

Essentially the EU wants to preserve EU free movement rights for all EU citizens currently exercising these rights (including British citizens currently living in the 27 remaining EU Member States), with enforcement through the Court of Justice of the European Union. The EU wishes to guarantee these rights for the lifetimes of those affected.

The [European Council's negotiating directives](#) state:

#### III.1. Citizens' Rights

20. The Agreement should safeguard the status and rights derived from Union law at the withdrawal date, including those the enjoyment of which will intervene at a later date (e.g. rights related to old age pensions) both for EU27 citizens residing (or having resided) and/or working (or having worked) in the United Kingdom and for United Kingdom citizens residing (or having resided) and/or working (or having worked) in one of the Member States of the EU27. Guarantees to that effect in the Agreement should be reciprocal and should be based on the principle of equal treatment amongst EU27 citizens and equal treatment of EU27 citizens as compared to United Kingdom citizens, as set out in the relevant Union acquis. Those rights should be protected as directly enforceable vested rights for the life time of those concerned.

## 5.3 The response of British and EU citizens

In a joint response running to 12 pages, the campaign groups [the3million](#) and [British in Europe](#) accused the Government of failing to respond to the 'comprehensive offer made by the EU'. Their statement on the Government's proposals included the following criticisms:

- The Government did not respond to the EU's offer. Rather than discussing maintenance of the rights that EU citizens currently enjoy, the Government's proposals represent an entirely different offer, rooted in UK law. How does it expect reciprocity for British citizens in the remaining EU Member States?
- There is a mismatch between the EU offer which would protect the rights of all citizens affected by Brexit and the UK proposals which address only EU citizens in the UK - 'simply referring to reciprocity does not remedy this omission';
- The 'most noticeable omission' is the lack of detail on how the Government proposes to protect the rights of British citizens in remaining EU Member States;
- The Government should seek to 'ring-fence' any agreement on citizens' rights from the rest of the negotiations: the current 'nothing-is-agreed-until-everything-is-agreed' approach only contributes to the anxiety and uncertainty faced by those affected;

British in Europe argues that the Government has not explained how it aims to protect British citizens in the remaining EU Member States

<sup>42</sup> ['Improve the Brexit offer to EU citizens, or we'll veto the deal'](#), *Guardian*, 9 July 2017

- There will need to be some form of supra-national dispute resolution body to protect citizens' rights in the future; given the 'cumulated experience and case law of the CJEU' on the rights of migrants (both British and other European), the CJEU represents the easiest and most practical option;
- The proposals do not guarantee the rights set out therein will be for the lifetimes of those affected.

## 6. Parliamentary comment since the referendum

### 6.1 Opposition day debates

#### 6 July 2016

The motion of the [Opposition Day Debate on 6 July 2016](#), held just before Theresa May's appointment as Prime Minister, was moved by Andy Burnham and read as follows:

That this House notes that there are approximately three million nationals of other EU member states living in the UK; further notes that many more UK nationals are related to nationals of other EU member states; rejects the view that these men, women and children should be used as bargaining chips in negotiations on the UK's exit from the EU; and calls on the Government to commit with urgency to giving EU nationals currently living in the UK the right to remain.

The motion was agreed to, with 245 in favour and two members choosing to abstain by voting both for and against.

Opening the debate Andy Burnham accused then Home Secretary Theresa May of failing to address the anxiety felt by EU nationals in the UK and by their family members:

Instead of showing leadership and sending out an immediate message of reassurance in the aftermath of Brexit, she has added to the uncertainty that many people were already experiencing, and she has left them feeling like bargaining chips in the Brussels negotiations.<sup>43</sup>

Members from both sides of the House supported the motion. Boris Johnson reminded the House of the reassurance the Vote Leave campaign had sought to offer EU citizens in the UK. He described it as "very, very disappointing" that their status should be called into question.<sup>44</sup> John Redwood expressed his hope that the motion passing would represent "a great offer of reassurance from this whole Parliament".<sup>45</sup>

Despite this support, accusations that the Government views EU citizens in the UK as 'bargaining chips' have persisted. The International Trade Secretary Liam Fox was criticised for comments made to a fringe event at the Conservative Party Conference in which he described the uncertainty facing EU citizens in the UK as one of the Government's "main cards" in the expected negotiations over the UK's exit from the EU. According to the *Guardian* Mr Fox said the government would "like to be able to give a reassurance to EU nationals in the UK, but that depends on reciprocation by other countries", and any other strategy "would be to hand over one of our main cards in the negotiations and doesn't necessarily make sense at this point". Chuka Umunna

Senior figures in Vote Leave reiterated assurances given during the referendum

Opposition members have repeatedly accused the Government of viewing EU nationals in the UK as 'bargaining chips'

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<sup>43</sup> HC Deb 6 July 2016 c937

<sup>44</sup> HC Deb 6 July 2016 c939

<sup>45</sup> HC Deb 6 July 2016 c938

denounced such an approach as treating EU nationals as “poker chips” and “gambling with their future”.<sup>46</sup>

### 19 October 2016

The motion of the [Opposition Day Debate on 19 October 2016](#) was moved by Joanna Cherry and read as follows:

That this House recognises the contribution that nationals from other countries in the EU have made to the UK; and calls on the Government to ensure that all nationals from other countries in the EU who have made the UK their home retain their current rights, including the rights to live and work in the UK, should the UK exit the EU.

The motion was not agreed, with 250 members voting in favour and 293 voting against.

Throughout the debate Scottish National Party and Labour members repeatedly accused the Government of “using individual human beings as bargaining chips”.<sup>47</sup>

## 6.2 Select Committee comment

### Joint Committee on Human Rights

In its report '[The human rights implications of Brexit](#)' the Joint Committee on Human Rights (JCHR) warned against any approach to Brexit negotiations that treated individuals' rights as bargaining chips:

50. On the question of residence rights, we believe that it is not appropriate to treat individuals' fundamental rights as a bargaining chip. Notwithstanding the moral imperative to respect the rights of EU nationals, there is also a considerable practical impediment to treating such rights as negotiable. It is not realistic to imagine that the UK Government would be in a position to deport the large numbers of EU nationals currently in the United Kingdom. Under Article 8 of the ECHR, individuals are entitled for respect to their private and family life and home.

51. While these rights are in no way absolute, it would not be possible to establish a bright-line rule that would allow the deportation of EU nationals simply on the grounds that they had only been resident for a fixed period of time. Other factors would certainly be relevant and each case would have to be considered on its own facts. In such circumstances, there would be the potential for significant, expensive and lengthy litigation which could lead to considerable uncertainty for a prolonged period of time and could potentially overwhelm the UK courts and tribunals system.<sup>48</sup>

The JCHR highlighted the 'considerable practicable impediment' to treating EU nationals' rights as negotiable

The JCHR urged the Government to seek a quick resolution by way of a separate, preliminary agreement to avoid subjecting individuals to 'continuing and distressing insecurity'.<sup>49</sup>

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<sup>46</sup> '[Liam Fox: EU nationals in UK one of 'main cards' in Brexit negotiations](#)', *The Guardian*, 4 October 2016

<sup>47</sup> HC Deb 19 October 2016 c821 (and throughout the debate)

<sup>48</sup> Joint Committee on Human Rights, *The human rights implications of Brexit*, 19 December 2016, HC 695/ HL Paper 88, 2016-17, paragraphs 50-51

<sup>49</sup> *Ibid*, paragraph 53

## House of Lords European Union Committee

In its report '[Brexit: acquired rights](#)' the Lords EU Committee called on the Government to give a unilateral guarantee that it will safeguard the EU citizenship rights of all EU nationals in the UK post-Brexit. It described 'the overwhelming weight of the evidence' as pointing to this resolution being the 'morally right thing to do'.<sup>50</sup>

The Committee cast doubt on claims made before the referendum that the Vienna Convention on the Law of Treaties or the customary international law doctrine of acquired rights would safeguard EU rights post-Brexit:

60. It is evident that the term 'parties' in Article 70 (1)(b) of the Vienna Convention on the Law of Treaties refers to States, not to individuals or companies. In no sense, therefore, can this provision be said to safeguard individual rights under EU law that will be lost as a consequence of the UK's withdrawal, in the absence of a negotiated settlement.

[...]

71. The evidence we received makes very clear that the doctrine of acquired rights under public international law will provide little, if any, effective protection for former EU rights once the UK withdraws from the EU. The scope of acquired rights is limited to certain contractual and property rights which, even were they to coincide with EU rights, are highly unlikely to be enforceable. Reliance on the doctrine before the referendum as a means of protecting EU rights was therefore misplaced.<sup>51</sup>

What a post-Brexit immigration policy may look like was addressed in the Lords EU Committee's recent '[Brexit: UK-EU movement of people](#)'.<sup>52</sup>

The Committee revealed that the unanimous view of the public and private sector employers' groups who gave evidence to its inquiry was that the Government should not apply the UK's non-EU work permit system to EU nationals:

Employers' organisations were alarmed at the prospect that EU nationals might in future be subject to the UK's non-EU immigration regime, the 'Points Based System'. To do so would disproportionately affect some employers' ability to sponsor EU workers, and could result in labour shortages in some areas, including in publicly-funded sectors such as the NHS and social care, and in horticulture, where the closure of the Seasonal Agricultural Workers Scheme at the end of 2013 was premised on growers having unrestricted access to workers from the EU.<sup>53</sup>

The Committee warned that placing EU citizens on the same footing as nationals from states outside the EU may impact upon the rights of British citizens living elsewhere in the EU. It also noted that the remaining EU Member States may not be so keen on a strictly reciprocal

Evidence received by the Lords EU Committee challenged the pre-referendum assertions that international law secures EU nationals' rights

Private and public sector employers alike told the Lords EU Committee that they opposed the application of the points-based system to EU migrants

<sup>50</sup> European Union Committee, *Brexit: acquired rights*, 14 December 2016, HL Paper 82, 2016-17, paragraph 147

<sup>51</sup> *Ibid*, paragraphs 60 and 71

<sup>52</sup> European Union Committee, *Brexit: UK-EU movement of people*, 6 March 2017, HL Paper 121, 2016-17

<sup>53</sup> *Ibid*, paragraph 166

arrangement, given the differences in the composition of EU migration to the UK and UK migration to the EU.<sup>54</sup>

Urging the Government not to close off options ahead of any exit negotiations, the Committee noted that offering preferential treatment to EU nationals compared to non-EU nationals in a future immigration regime may increase the likelihood of securing reciprocal preferential treatment for UK nationals in the EU.<sup>55</sup>

## Exiting the European Union Committee

In its report '[The Government's negotiating objectives: the rights of UK and EU citizens](#)' the Brexit Select Committee recognised the 'great deal of anxiety and uncertainty for EU citizens resident in the UK and for UK citizens in the EU' that resulted from the referendum and subsequent debate.<sup>56</sup> Noting the apparent differences between the Government and the European Commission as to the sequencing of negotiations, the Committee said it would be 'unconscionable for EU citizens in the UK and UK citizens in the EU not to have clarity about their status for another two years'.<sup>57</sup> For the Committee the resolution of the issue should be the first order of business in exit negotiations:

51. We commend efforts by the UK nationals living in other EU countries to put pressure on the respective governments where they live to resolve questions around their status as soon as possible. We do not believe the electorates of Europe will thank politicians in any country if the situation is allowed to continue for another two years. It is imperative that all parties to the negotiations put the resolution of the rights of all EU citizens in the UK and UK citizens in the EU as their first priority.<sup>58</sup>

The Brexit Committee expressed concern over the system currently in place for EU citizens seeking evidence of their right to permanent residency in the UK. It described it as 'not fit for purpose',<sup>59</sup> with 'unrealistic administrative and technical hurdles',<sup>60</sup> and 'too complex and onerous for clarifying the status of up to three million people'.<sup>61</sup> The Committee called on the Government to ensure, through legislation if necessary, that an EU migrant's access to the NHS is considered sufficient to meet the requirement to have comprehensive sickness insurance cover.<sup>62</sup> It also expressed its disapproval of the current practice of sending letters marked 'Prepare to leave the UK' to those EU migrants unsuccessful in their applications for permanent residency in the absence of any genuine grounds for that applicant's removal.<sup>63</sup>

The Brexit Committee was critical of the current, 'untenable' system by which EU migrants apply for proof of their right to permanent residence in the UK

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<sup>54</sup> Ibid, paragraph 163

<sup>55</sup> Ibid, paragraph 169

<sup>56</sup> Exiting the European Union Committee, *The Government's negotiating objectives: the rights of UK and EU citizens*, 5 March 2017, HC 1071, 2016-17, paragraph 16

<sup>57</sup> Ibid, paragraph 49

<sup>58</sup> Ibid, paragraph 51

<sup>59</sup> Ibid, paragraph 74

<sup>60</sup> Ibid, paragraph 80

<sup>61</sup> Ibid, paragraph 63

<sup>62</sup> Ibid, paragraph 73

<sup>63</sup> Ibid, paragraph 75

### 6.3 The passage of the *Withdrawal from the European Union (Article 50) Act 2017*

During the Committee Stage in the Commons, Harriet Harman, chair of the Joint Committee on Human Rights, moved an amendment to the Bill designed to protect the residence rights of those EU citizens who were lawfully resident in the United Kingdom on the date of the EU referendum:

New Clause 57

Nothing in this Act shall affect the continuation of those residence rights enjoyed by EU citizens lawfully resident in the United Kingdom on 23 June 2016, under or by virtue of Directive 2004/38/EC, after the United Kingdom's withdrawal from the European Union.

The proposed amendment was rejected by a majority of 42, with 290 members voting in favour and 332 voting against.<sup>64</sup>

When the Bill reached the House of Lords a similar amendment was tabled. Amendment 9B, moved by Baroness Hayter of Kentish Town, sought to add a provision that would guarantee the residence rights of EU citizens presently in the UK. It read as follows:

( ) Within three months of exercising the power under section 1(1), Ministers of the Crown must bring forward proposals to ensure that citizens of another European Union or European Economic Area country and their family members, who are legally resident in the United Kingdom on the day on which this Act is passed, continue to be treated in the same way with regards to their EU derived-rights and, in the case of residency, their potential to acquire such rights in the future.

Following a division on 1 March 2017 the House of Lords amended the Bill, with 358 peers voting for and 256 against. However on 13 March 2017 the House of Commons voted by 335 to 287 to remove the Lords' amendment.<sup>65</sup>

### 6.4 Reaction to the Government's White Paper of June 2017

Responding to the Prime Minister's statement to the House of Commons on the European Council, Labour leader Jeremy Corbyn described the Government's proposals for the status and rights of EU citizens in the UK after Brexit as 'too little, too late'. He disputed Mrs May's description of the proposals as a generous offer. Accusing the Government of being 'prepared to use people as bargaining chips', he challenged the Prime Minister to set out what will happen to EU citizens in the UK in the event that no deal is reached with the EU.<sup>66</sup>

The SNP criticised the government for failing to unilaterally guarantee EU citizens' rights in the UK.<sup>67</sup>

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<sup>64</sup> [HC Deb 8 February 2017 c557-560](#)

<sup>65</sup> [HC Deb 13 March 2017 c38-73](#)

<sup>66</sup> [HC Deb 26 June 2017 cc304-5](#)

<sup>67</sup> [HC Deb 26 June 2017 c307-308](#)

## 7. Polling

### ICM poll for British Future - July 2016

In polling commissioned by the think tank British Future, ICM found that 84% of the public supports letting EU migrants stay in the UK post Brexit. This is said to include three-quarters (77%) of Leave voters. Among Conservatives, support for protecting the status of EU citizens in the UK and UK citizens in Europe is said to be even higher at 85%, with 78% of UKIP supporters found to be in agreement. According to ICM, only 16% of the public think that EU citizens should be required to leave the UK and that UK citizens in Europe should return to Britain, with 23% of Leave voters and 15% of Conservatives agreeing. British Future announced these findings on 3 July 2016.<sup>68</sup>

### BMG Research for the *Independent* - October 2016

In a subsequent poll for the *Independent*, BMG Research found two thirds of the country would support moves to guarantee the rights of EU citizens living in the UK. BMG Research found that giving EU nationals such protection would enjoy majority support across every age and social group, and, with the exception of UKIP, among the supporters of every political party. According to the *Independent*, the poll questions were as follows:

BMG questioned a representative sample of UK adults, initially asking them if the Government should “guarantee the right of EU citizens to continue living and working in the UK post-Brexit”. In response, 58 per cent said “yes”, 28 per cent said “no” and 14 per cent said they did not know.

They were then asked: “If EU countries are willing to immediately guarantee the rights of British citizens living and working in those countries to continue post-Brexit, should the UK Government also immediately guarantee the right of EU citizens living and working in the UK?” A large majority of 66 per cent backed the move; just 21 per cent said “no” and 14 per cent said they did not know.<sup>69</sup>

### YouGov poll following Lancaster House speech - January 2017

YouGov polling conducted on 17-18 January 2017 following the Prime Minister’s speech at Lancaster House found 77% of the public support guaranteeing the rights of EU citizens already living in Britain in exchange for protection of the rights of British citizens settled in remaining EU Member States. According to YouGov, this view is held by 85% of those who voted Remain in the referendum and by 76% of those who voted for the UK to leave the EU.<sup>70</sup>

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<sup>68</sup> ‘Britons overwhelmingly back giving EU migrants right to stay in UK’, *City AM*, 21 August 2016; British Future, [‘Let EU migrants stay’ say the British public, plus voices from business and politics](#), 3 July 2016

<sup>69</sup> ‘Brexit: Theresa May urged to act fast as new poll finds huge support for protecting EU migrants’ rights’, the *Independent*, 29 October 2016

<sup>70</sup> [YouGov / The Times Survey Results](#), 18 January 2017, page 6

## Opinium poll for the *Observer* - February 2017

The *Observer* reported in February 2017 that an Opinium poll found that 33% of voters want EU citizens living in the UK to be given indefinite leave to remain automatically, with another 27% of the view that indefinite leave to remain should be granted to those who have lived in the UK for five years or more. Only 5% of people think EU citizens should not be allowed to remain in the UK post-Brexit.<sup>71</sup>

## Opinium/ LSE poll - July 2017

A further Opinium poll, conducted in July 2017 in conjunction with the London School of Economics, found that 26% of voters believe the UK should guarantee the rights of EU citizens currently settled in the UK **as well as** any EU citizen who lawfully settles in the country in the future. It found 15% take the view that the UK should guarantee the rights of EU citizens currently settled in the UK regardless of how long they have officially lived here. The poll suggests 42% believe the UK should only guarantee the rights of EU citizens if they have lived in Britain for at least 5 years. 17% of those polled professed to be unsure.<sup>72</sup>

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<sup>71</sup> 'Tories widen lead over Labour to 13 points in new poll', *the Observer*, 18 February 2017; See <http://opinium.co.uk/political-polling-14th-february-2017> for a link to full data and tables (last accessed 11 July 2017)

<sup>72</sup> Opinium, 'Brits think EU nationals should be able to vote', 30 June 2017; See <http://opinium.co.uk/wp-content/uploads/2017/07/OP8601-LSE-EU-Citizen-Rights-Tables.xls> for a link to full data and tables (last accessed 11 July 2017)

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