



| It is an open question how far the rights of UK citizens in EU countries and of EU citizens in the UK will be safeguarded after Brexit.

BREXIT: WHAT ARE THE OPEN ISSUES RELATING TO THE FUTURE RIGHTS OF UK AND EU CITIZENS?

by Jonathan Portes

The British government has come up with proposals to safeguard the rights of UK citizens in EU countries and of EU citizens in the UK after Brexit. However, leading lights from the European Union have criticised the proposals for lacking clarity and have many concerns, including that they may lead to the existing rights of citizens being reduced. Professor Portes sets out his views on the open issues to be dealt with.

The proposals put forward by the EU would broadly preserve, on a reciprocal basis, all

the current and future rights of EU27 citizens in the UK and Brits in the EU of 27 countries under EU law. – Ironically,

this was precisely what Boris Johnson and other Leave campaigners promised before the vote. But there are some

key points in the EU proposals which will be difficult for the UK government to accept.

First, they would indefinitely preserve the current position where EU citizens living in the UK have, in some respects, more rights than Brits. Thanks to Theresa May's determination when home secretary to reduce immigration by any means necessary, if you're a Brit and fall in love with and marry a Brazilian, you'll have to jump through a number of hoops if you want to live in London. If you're low paid or in insecure work, forget it. But if you're French or Bulgarian, and want to live in Birmingham with your Eritrean spouse, there is no income test.

Now it may be difficult for the UK government to sell a deal whereby, even after Brexit, this apparent anomaly continues. But it's not clear that the EU will give ground on this. EU27 citizens who moved here did so on the basis of the law as it now stands. They have a reasonable expectation, reinforced by the statement made by Vote Leave, that those rights should not be taken away. And from the point

of view of the rest of the EU, it's not their problem that the UK government chooses to treat its own citizens in this way. The UK could easily solve it by restoring the rights Theresa May took away from the Brits but don't hold your breath.

However, from a UK government perspective, the most provocative part of the EU position is the insistence that the rights of EU citizens living in the UK after Brexit (and indeed Brits elsewhere in the EU) are ultimately subject to the jurisdiction of the European Court of Justice.

The UK's position on this is that a continuing role for the ECJ in domestic British law is unacceptable. But the EU's perspective is that the ECJ is needed because the technical provisions of the deal, relating not just to residence, but to social security, pensions and access to services, will be extremely complex, and legal disputes are inevitable.

Aside from the question of the EU-UK dispute settlement mechanism, there are also many other open questions, including:

What will be the cut-off date for resident EU citizens to qualify for the new settled status following the UK's proposals?

What about the many hundreds of thousands of people whose case will be more complex, because they are out of the country on the cut-off date or have interrupted periods of residence?

Regarding the grace period of up to 2 years for all EU citizens (see box), what criteria will EU nationals have to meet and does the UK have the administrative capacity to process all their applications?

Will the UK guarantee the (indefinite or at least prolonged) continuation of all rights?

For a deal to be struck, both sides will need to make concessions. In particular, the UK will have to accept that it will either have to alter its own immigration policy – a development many would welcome – or continue “special treatment” for EU citizens, at least in some respects, for some time after Brexit.

And the EU will need to recognise that while it's reasonable to require that EU citizens here have recourse to an independent tribunal that can override the UK courts, that cannot be the ECJ. Again the UK will need to make the first move: the ball is in Britain's court. The UK's latest position papers do suggest that it might be prepared to accept a new, independent dispute settlement mechanism to enforce any agreement. This is a step forward – but the devil will be in the detail.



> AUTHOR

Jonathan Portes is Professor of Economics and Public Policy in the Department of Political Economy at King's College London. In the past, he has worked as a principal research fellow of the National Institute of Economic & Social Research, as chief economist in the UK government's Cabinet Office and as chief economist in the UK government's Department of Work and Pensions.

Adapted excerpt from the UK government's proposals on the rights of EU citizens

The paper confirms the creation of a new 'settled status' for EU citizens who arrive before a cut-off date (which is yet to be specified). Applicants who already have 5 years' continuous residence in the UK will be immediately eligible for settled status. Those who arrived before the specified date but do not yet meet the 5 year threshold by exit day will be allowed to stay until they reach that milestone and can also secure settled status. Those EU citizens who are granted settled status will be treated like a comparable UK national, entitled to broadly the same rights and benefits. A grace period of up to 2 years will be in place for all EU citizens, including those who arrive after the cut-off date, allowing them to regularise their status to remain in the country. All those applying to remain in the UK will undergo full criminality checks.