

Law and migration: The legal implications of withdrawing from the EU?

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Present position: EU law

Treaty on European Union

Treaty on the Functioning of
the European Union

Article 9 Treaty on European Union

PROVISIONS ON DEMOCRATIC PRINCIPLES

Article 9

In all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.

Article 20 Treaty on the Functioning of the European Union

1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.

Article 20 Treaty on the Functioning of the European Union

2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, inter alia:

(a) the right to move and reside freely within the territory of the Member States;

...

These rights shall be exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder.

Article 21 Treaty on the Functioning of the European Union

1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.

2. If action by the Union should prove necessary to attain this objective and the Treaties have not provided the necessary powers, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1.

3. For the same purposes as those referred to in paragraph 1 and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt measures concerning social security or social protection. The Council shall act unanimously after consulting the European Parliament.

EU Law: Secondary rules

Directive 2004/38/EC

On the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

EU Law: Secondary rules

Regulation 883/2004

on the coordination of social
security systems

EU law: Charter of Fundamental Rights

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.

EU law in UK law

The Immigration (European
Economic Area) Regulations
2006

provisions for social security
and social assistance

EU free movement rights in practice

Right of admission (and visa free)

Initial right of residence (up to three months)

Extended Right of Residence

Right of Permanent Residence
(after 5 years, but quicker in certain cases)

EU free movement rights in practice

Extended Right of Residence:

Workers

Self-employed

Students

Self-sufficient

EU free movement rights in practice

Family members (any nationality):

Spouses

children

Grandchildren

unmarried partners

dependent parents

siblings, etc.

EU free movement rights in practice

Procedural protection

Protection against
expulsion

Residence documents

Present position: UK law

Immigration Act 1971

Immigration Act 1988

other Immigration Acts

Present position: UK law

British citizens - the right of abode, live and work in the UK without permission

Persons subject to immigration control, may live and work in the UK subject to permission and on such conditions as may be imposed (permission to work, access to social assistance, etc.)

Present position: UK law

Immigration Rules

Leave outside the Rules

Visas

permission to enter and remain

domestic regulation of access to the
labour market and access to social
assistance

Present position: UK law

Persons subject to immigration control require leave to enter or remain

Persons exercising enforceable EU rights *do not* require leave to enter or remain

After Brexit

No EU Treaty rights

No privileged position for EU citizens

All EU citizens and family members to be subject to immigration control

After Brexit

EU citizens already in the UK,
with Residency
documentation

EU citizens already in the UK,
without Residency
documentation

After Brexit

EU citizens seeking
admission to the UK

After Brexit

Access to the labour
market

Access to social
assistance

After Brexit

British citizens seeking to travel to
and work in the EU:

Visas

Permission to enter

Permission to work

Residence Permits

Access to social assistance

Settlement

Future arrangements

UK/EU Immigration control

European Economic Area

Switzerland

Turkey (Ankara Agreement)

Association Agreement

UK and Ireland

Common Travel Area

Good Friday Agreement

Irish citizens as EU
citizens

The End