

THE IMPACT OF • COVID-19 • ON EU CITIZENS’ RIGHTS • IN THE UNITED KINGDOM •

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The impact of COVID-19 on EU citizens' rights in the United Kingdom

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A narrative shift on migration?

The COVID-19 crisis has arguably shifted the debate on migration in the EU. Previously labelled ‘low skilled’ workers, such as cleaners and delivery drivers, are the key workers holding our continent together in this period. The crisis has been a wake-up call to reassess our values as individuals, but also as Europeans. It has shown how restrictive migration policies simply do not work if what we want is to keep everyone safe while we collectively get through the pandemic.

A [particular focus](#) in the European context has been undocumented migrants, or those with insecure status, who struggle to access basic rights and are often forced to work in unsafe conditions. However, even those migrants who are EU citizens are at risk of missing out on their rights in this pandemic. EU citizenship comes with a set of rights. Yet the question is how and whether these rights can be exercised. This crisis has shown us it is not always straightforward, in particular regarding access to social security and being able to return to one’s country of residence. Before detailing on some of the key issues affecting EU citizens in the COVID-19 context, it is important to place these issues in the wider European context.

COVID-19 impact on European borders

Every European country has experienced specific problems during the pandemic, depending on how their national-level policies operate. On migration related issues, the mechanisms by which migrants’ access social security, healthcare and other support vary across the continent. However, all European countries are impacted by inner border closures. Even within Schengen, the [Borders Code](#) permits EU member states to introduce controls if there is a serious threat, as a last resort measure.

A series of border controls have been introduced in the COVID-19 context. A [chronology](#) of all Schengen border closures has been published by the European Commission. In early March 2020, States such as Austria and Switzerland started closing inner borders with the most affected country at the time, Italy. Border closures rapidly expanded and some member states, such as Finland and Spain, closed all their internal borders in mid-March. In

April, once the pandemic approached its peak in several European countries, such as Spain and Italy, most internal and air borders were closed. Border controls were temporarily reintroduced following reviews of the pandemic situation at the end of April and in early May. Within these circumstances, many EU citizens who found themselves outside their country of residence had trouble returning home. This issue will be detailed in the paper in reference to repatriation policies and how it has affected EU citizens who are resident in the UK.

Unequal access to EU citizens' rights

Seasonal workers have been a key focus in the COVID-19 discussions regarding freedom of movement. They are the intra-EU migrants who are often categorised as 'low skilled', but their freedom of movement has been essential to meet the workforce needs for sectors such as agriculture. Especially Western European countries, such as Germany, France and the UK, heavily rely on European seasonal workers to fill in labour shortages. At the end of March 2020, the European Commission released [guidance](#) on how migrant key workers can reach their workplaces within Europe, including in agriculture and food processing.

These measures to allow movement in a time when most countries in Europe were in lockdown came in response to significant labour shortages across the continent. This situation raises questions about the sustainability of the seasonal migrant work model, but it also led to concerns about compliance with [workers' rights](#) and health measures. A shortage of labour prompted some countries, such as Germany for example, to [lift the ban](#) on migrant agricultural workers relatively early during the pandemic. In the UK, the shortage of seasonal workers, affected by the context of Brexit, was exacerbated with the impacts of COVID-19. While the UK was under strict lockdown, seasonal workers mainly from Eastern Europe were [flown in for jobs](#) like fruit picking.

The movement of seasonal workers during COVID-19 provoked responses at European level on whether those workers' rights are protected, as well as questioning whether hygiene and social distancing rules can be protected in the workplace. There have also been cases of seasonal workers being returned, such as in [France](#) at the start of May, despite the Commission's guidelines to

ensure the freedom of movement of these workers. In late May 2020, European Parliament members in the Employment and Social Affairs Committee underlined breaches in workers' rights and safety and made a series of recommendations, such as urgent labour inspections and stricter enforcement of EU laws. In addition, the Committee highlighted that access to social security should be equal for all EU citizens. This paper will illustrate, with cases from the UK, on how accessing social security is challenging or impossible for some EU citizens.

The UK in a European context

To unpack some of the European-level issues facing EU citizens in the COVID-19 crisis, this paper focuses on case studies of EU citizens who have used their freedom of movement rights in the United Kingdom. Although this is a case study on a country that is currently in the transition period following the 2016 referendum decision to leave the EU, the situation of EU citizens in the UK has policy implications at a wider, European level. In the COVID-19 context, most responses to the crisis have been at national level. The situation of EU citizens resident in the UK who cannot access their rights is as much a UK Government responsibility as it is relevant for discussions within European Union institutions.

There are an estimated [3.6 million](#) EU citizens living in the UK. However, there is no data on the exact number of EU citizens living in the UK, because unlike most other EU member states, the UK has never had a comprehensive registration system for EU migrants. The UK and the EU have reached a deal ('the Withdrawal Agreement') setting out the terms of the UK's departure from the EU. Amongst those terms are obligations to protect the rights of EU citizens living in the UK. All EU, EEA and Swiss citizens and their non-EU family members need to apply to the EU Settlement Scheme for a new immigration status before the deadline of 30 June 2021 to secure their rights in the UK. The status granted via this brand-new scheme, is the source of the rights protected by the deal between the EU and the UK.

The COVID-19 crisis makes it even more difficult for EU citizens to secure their status. For instance, EU citizens who could not use the online application to scan their physical ID could not send physical documents to the Home

Office for almost two months.¹ The latest [statistics](#) show that applications during March and April dropped significantly, and despite a large backlog of applications, the scheme's application decision capacity appears to have fallen to just over a quarter of its pre-lockdown capacity.

Pre-settled vs. settled status

Successful applications to the EU Settlement Scheme result in two types of immigration status - either pre-settled status or settled status. Pre-settled status - or limited leave to remain under the EU Settlement Scheme - was designed for those who have been living in the UK for less than a continuous five-year period (defined as 6 months out of every 12 months for five continuous years). Settled status - or indefinite leave to remain under the EU Settlement Scheme - is granted to those who can prove they have been residing in the UK for a continuous period of five years or longer. In addition to certain criminality and identity checks, the EU Settlement Scheme analyses an applicant's residency in the UK, not whether the applicant has exercised EU treaty rights (i.e. whether s/he has been economically active in an EU member state - working, self-employed, studying or being self-sufficient).

There are several [differences](#) in the rights associated with pre-settled and settled status. One of the important ones which is not very well known by the public, is the difference the status makes when applying for welfare benefits and housing. With settled status, EU citizens enjoy the same rights to welfare as UK citizens; this status is evidence of a so-called 'right to reside', which is tested for benefits/housing applications. However, pre-settled status does not count as 'right to reside' for the purposes of welfare benefits and housing support. This has presented serious issues for those seeking help owing to the impact of COVID-19, and who are facing destitution and homelessness.

This particular difference in rights is controversial. The UK's position is to say that they can conduct further tests at the point of use of social assistance services and deny them to those that have not exercised EU treaty rights. Such an approach presents a confusing position: those with status granting them rights under the Withdrawal Agreement will have access to some, but not all. It also appears to contradict a straightforward reading of the Withdrawal

¹ Some operations re-opened at the end of May 2020.

Agreement which sets out that such rights to access social assistance stem from the status and not further, rolling testing.

Evidence collection

This paper draws on the3million's [evidence submission](#) to the UK Home Affairs Select Committee (HASC) in response to a request for questions and evidence regarding the impact of COVID-19 on migrants. Between 31 March 2020 and 17 April 2020, the3million collected testimonies from EU citizens and some cases were followed-up in detail.

For this paper, the evidence collected for the HASC submission is also supplemented by additional insight and testimonies received after mid-April up until the time of writing. The vast majority of cases we collected evidence on two issues: access to social security and people not being able to return to their home in the UK. While some additional issues are noted at the end of this paper, before concluding on the implications at the European level, the next two sub-sections focus on illustrating the two most common issues.

A. EU citizens denied social security support during COVID-19

An [impact assessment](#) commissioned by Migration Exchange in May 2020 concluded that many EU citizens living in the UK who lost their income source due to COVID-19 have minimal access to a social safety net. The assessment notes that EU citizens can face difficulties in accessing benefits such as Universal Credit.

In a recent [briefing](#), the3million explains the difference between 'pre-settled status' and 'settled status' when accessing Universal Credit. Settled status, like other indefinite leave to remain immigration statuses, automatically satisfies the 'right to reside' requirement of the Habitual Residence test. Before July 2019, those with pre-settled status were also able to satisfy this requirement, but the UK government introduced [regulations](#) reversing that. This means that EU citizens with pre-settled status have to prove their right to reside in an alternative way (by relying on the UK's EU free movement rights which are set to be repealed after the end of the transition period), such as showing they are a worker or self-employed.

Given these changes, it is unsurprising that many EU citizens in the UK face difficulties accessing Universal Credit during the pandemic or are rejected for their claims to social support. Over a million of EU citizens only have the less secure pre-settled status. The overwhelming majority of EU citizens who contacted the 3million after the pandemic started shared their experiences of trying to access Universal Credit. Many of those were EU citizens with pre-settled status, rejected for Universal Credit due to not passing the Habitual Residence test.

One such case is Antonio (pseudonym), an Italian citizen living in the UK with his British-Swiss partner. He is a full-time carer for his disabled son. He does not have settled status yet because his passport expired, and the COVID-19 crisis delayed passport renewals at the Italian consulate. Despite living in the UK for 16 years, Antonio's claim for Universal Credit was refused as he failed the Habitual Residence test. His partner describes the situation as 'petrified of losing our home'.

Highly mobile workers such as freelancers seemed to be particularly affected when trying to access social security support. To illustrate, one such case is of Adrian, a Greek citizen with pre-settled status living in the UK. He is a freelance guitar tutor and worked in the hospitality industry. He was dismissed from his job in the hospitality industry in January 2020. Despite trying to grow his business as a guitar tutor and applying for other jobs, he struggled to make ends meet after the pandemic hit the UK. Adrian's application to Universal Credit was also rejected for failing the Habitual Residence test. He told us: 'I literally don't know how I am going to manage paying the rent at the end of the month'. Another similar case is that of Kostas, a citizen of Cyprus who moved to the UK in 2019 with his family of three, who all obtained pre-settled status. Kostas is self-employed and lost all his contracts with the COVID-19 crisis. The government's COVID-19 support package for the self-employed announced in late March did not cover his case. His Universal Credit application was also rejected due to failing the Habitual Residence test, given he was categorised as a jobseeker. Kostas' wife is pregnant, and they worry about 'surviving financially in the coming weeks and months'.

B. EU citizens stranded abroad during COVID-19

While social security support mostly affects EU citizens with pre-settled status or without a status, the second most common issue in our research – not being able to return home in the UK - seems to affect EU citizens regardless of their status. In the context of border closures across Europe, many are left stranded abroad with little support. We received several cases showing the same issue, also affecting EU citizens with full settled status.

Some cases were of EU citizens currently outside the EU who cannot return to their home in the UK. For instance, Elzbieta is a Polish citizen with settled status who has been living in the UK for 19 years. Before the lockdown, she was in Uganda with her four-year-old son. Their flight from Kampala to their home in London was cancelled. The only commercial flight available was over \$4,000 for both tickets, which she could not afford. She said that the British Embassy in Kampala 'hung up' as soon as they heard she was not British when asking whether they could assist her and her 4-year-old son to return to their home in London. She was with her son in Kampala facing a one-hour walk to the nearest food shop as all public transport was stopped, and without financial support or health insurance. Her local community in London set up an online fundraiser and managed to pay for a flight back to the UK. After weeks of anxiety, Elzbieta has finally returned home in London.

However, others still have not found a solution for their return. Diana is an Italian citizen with settled status. At the time of writing, she is stranded in South America, Colombia. She has been trying to return to England for the last two months. The British embassy would not add her name to the waiting list, as she is not a British citizen.

We also found similar situations happening for those finding themselves on the European continent. One case is that of Dimitros, Cypriot with settled status who had a scheduled flight back to his home in the UK on 22 March. Cyprus went into lockdown and Dimitros could not travel back. He was also not able to travel between the Northern part of the island where he was and the Southern part where there were a few commercial flights available. He found himself at 'the back of the queue' of UK repatriation flights and did not get any support and was even unable to access any information. The British High Commission did repatriate some people who were stranded in the Northern part of the island via Sovereign Base Areas, but this option was not open to him due to his non-British passport. Similarly, a repatriation flight

from the Northern part of the Island to Germany was opened to British citizens only and he could not get a seat even though there were empty seats.

The above cases all have settled status. For those who have not yet been granted settled status however, not being able to return home can potentially create the additional problem of breaking ‘continuity of residence’ and thereby risking their future settled status application being turned down and consequently missing out on their rights in the future.

C. Other pressing issues for EU citizens in the COVID-19 pandemic

In addition to access to social security and other support and returns from abroad, which were the two most frequent issues raised by EU citizens, our research uncovered several other impacts of COVID-19 on the ability of EU citizens to exercise their rights. Although those issues are experienced by EU citizens living in the UK, similar issues arise in other countries as well, where the operation of immigration services for instance are also affected by COVID-19. These include:

- Concerns about how the UK’s stringent ‘right to rent’ or ‘right to work’ checks has been applied during the pandemic;
- Various issues on the administration of the EU Settlement Scheme, including not being able to send in physical documents, while the deadline of 30 June 2021 has not been extended;
- The closure of registry offices, which can severely impact non-EU citizen family members needing to apply to the EU Settlement Scheme before the expiration of their current immigration status;
- Access to the NHS for visitors who are currently stranded in the UK due to COVID-19 restrictions;
- Closures directly impacting British naturalisation applications, such as Life in the UK test appointments, risking some EU citizens missing the deadline to be eligible for dual nationality.

Conclusion

The cases of Antonio, Adrian and Kostas who cannot receive social security support and the cases of Diana, Dimitros and Elzbieta who were or still are unable to return to their home in the UK have both short-term and longer-term implications. In the immediate term, there needs to be enhanced international cooperation to uphold the rights of EU citizens who made their home in a country other than their country of birth. In particular, the issue of pre-settled status holders being unable to access vital support for living costs in this period needs to be considered at the European level, in the context of agreements on citizens' rights. The 3million have argued that this appears contrary to the UK Government's obligations under the Withdrawal Agreement.

The EU's project has been based in part on dismantling internal borders, yet the COVID-19 crisis has shown how easily these borders have been resurrected. Repatriation policies have been inadequate and should be improved to avoid citizens who are trying to return to their homes from falling between the cracks. Moreover, as our cases illustrate, there is an urgent need to revise policies to ensure access to social security is open and equal to all EU citizens, as the [European Parliament](#) also highlighted on May 25.

In the longer term, it is crucial that citizens' rights remain a priority at EU level. Moreover, it is vital to consult organisations and groups who directly hear from and represent affected EU citizens in different countries to ensure we have a reliable evidence base. In the case of the UK, the specialised subcommittee on citizens' rights established by Article 165 of the Withdrawal Agreement is a key space to protect the estimated five million EU citizens who have made their home on both sides of the Channel. It allows important conversations to take place and to inform policy change to ensure that citizens' rights can be exercised in practice and equally. There also needs to be more oversight on how workers' rights are implemented, particularly in the case of seasonal workers or EU citizens in more precarious employment.

If the fundamental status of EU citizenship means anything at all, citizens who have exercised free movement to make their home in a country other than the one they were born in, need to be protected rather than penalised for seizing all the opportunities that European citizenship has given them.

The impact of COVID-19 on EU citizens' rights in the United Kingdom

The COVID-19 crisis has shifted the debate on migration in the European Union. Previously labelled 'low skilled' workers, such as cleaners and delivery drivers, were the key workers assuring the functioning of essential services during this period. To unpack some of the European-level issues facing EU citizens living in another Member State, this paper focuses on case studies from EU citizens living in the United Kingdom. It is based on a series of testimonies on mainly two specific problems: access to social security and the impossibility of returning to one's country of residence.

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