



PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Liberty's Briefing on EU nationals in the UK and UK nationals in the EU for Ping Pong in the Commons

February 2017

About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty Policy

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at

<http://www.liberty-human-rights.org.uk/policy/>

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1. As the European Union (Notification of Withdrawal) Bill returns to the House of Commons, Liberty urges Members of Parliament to insist on baseline protections for human rights and basic fairness. Liberty has repeatedly stressed the need to safeguard EU-law rights protections in any forthcoming ‘Great Repeal Bill’, without which Brexit cannot be a success. A particularly pressing matter, however, is the status of EU nationals in the UK and UK nationals in the EU.
2. **Liberty urges Members of Parliament to agree with Lords’ Amendment 1.** The amendment requires that the Government guarantee the EU-law rights of EU nationals in the UK, and must bring forward proposals to do so within three months of notifying the EU of withdrawal. This commitment will set the tone for the negotiations, helping ensure the equal treatment of UK nationals in the EU – whose status is similarly unsure – and founding the UK’s future position on a respect for human rights and equality. It will ensure that EU nationals in the UK are treated fairly, guaranteeing the rights on which they have built their lives here in this country.

Not a matter of negotiation

3. EU nationals in the UK have built their lives on the basis of key legal protections provided by EU law. As a matter of basic fairness and natural justice, their legitimate and reasonable expectations should be respected.
4. Brexit was not about stripping individuals of their rights: 77 per cent of those who voted to leave want EU nationals to retain their rights after Brexit, and 84% of the British public as a whole agree that EU citizens should be able to remain in this country.¹ As the official Vote Leave campaign said, there should 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.”²

¹ Polling from ICM for British Futures, for which see *The Guardian*, ‘British want EU migrants to stay after Brexit, says poll’, 21 August 2016, available here:

<https://www.theguardian.com/world/2016/aug/21/migration-poll-eu-workers-brexit>, and British Future, ‘Let EU migrants stay’ say the British public, plus voices from business and politics’, 3 July 2016, available here: <http://www.britishfuture.org/articles/15131/>.

² Published on the Vote Leave website and widely reported, e.g. *The Guardian*, ‘Would Europeans be free to stay in the EU after Brexit?’, 22 June 2016, available at:

<https://www.theguardian.com/uknews/2016/jun/22/will-europeans-be-free-to-stay-in-the-uk-after-brexit>.

5. Expressing the same view, the House of Commons overwhelming passed a motion in support of the right of EU nationals to remain in the UK.³
6. And three separate reports have strongly echoed these views. British Future recommended that EU nationals in the UK on withdrawal should be granted rights of permanent residence.⁴ The House of Lords EU Committee was unequivocal in its conclusions:

“We urge the Government to change its stance and to give a unilateral guarantee now that it will safeguard the EU citizenship rights of all EU nationals in the UK when the UK withdraws from the EU. The overwhelming weight of the evidence we received points to this as morally the right thing to do. It would also have the advantage of striking a positive note for the start of the negotiations, which will be much needed.”⁵

7. And the Joint Committee on Human Rights has urged the Government to fundamentally rethink its approach:

“...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.”⁶

8. This was repeated by Baroness Hayter in the Lords’ Committee debate:

“[The amendment] would ensure that the rights that EU citizens here would have if we remained in the EU should stay the same on exit day. These people need to know now, not in two years’ time or even 12 months’ time. They simply cannot put their lives on hold. Some are planning schools for

³ For the debate, see House of Commons Hansard, 06 July 2016, column 937. The motion was passed by 245: 2 (division at columns 979-980).

⁴ British Future, ‘Report of the Inquiry into securing the status of EEA+ nationals in the UK’, December 2016, available here: http://www.britishfuture.org/wp-content/uploads/2016/12/EUNationalsReport.Final_12.12.16.pdf.

⁵ House of Lords European Union Committee, ‘Brexit: acquired rights’, 10th Report of Session 2016-17, 14 December 2016, available here:

<https://www.publications.parliament.uk/pa/l201617/ldeucom/82/82.pdf>.

⁶ Joint Committee on Human Rights, ‘The human rights implications of Brexit’, Fifth Report of Session 2016-17, 14 December 2016, available here:

<https://www.publications.parliament.uk/pa/jt201617/jtselect/jtrights/695/695.pdf>.

their children or moving jobs, renting or buying homes or acting as carers. Some are receiving healthcare. Many more are working in our health service. All should have their uncertainty removed, particularly as the reality is that many would have other rights to remain under the European Convention on Human Rights. Do we really want to clog up our courts and cause these people dismay by forcing them to court in order to assert those rights?”⁷

9. However, the new Prime Minister has made clear that she wants this issue to form part of the UK’s Brexit negotiating position, and her Government has suggested that EU nationals are merely ‘bargaining chips’ in future talks. In so doing, the Government seems to be contemplating mass deportations in the event that it suits their negotiation strategy. To suggest that the lives of over 3 million EU nationals in the UK can be bargained away is deeply wrong.
10. Indeed, the early signs of the Government’s approach are extremely worrying. The charity Bail for Immigration Detainees have identified a shocking fivefold increase in the number of EU citizens being detained at Immigration Removal Centres.⁸ Individuals have reportedly been detained for reasons as spurious or trivial as losing their ID cards or having a birthday party in a park. As Baroness Ludford stated in the House of Lords:

“The goalposts have been moved retrospectively. People are being asked to document every move in their lives and they are being required to prove that they have private medical insurance. Although they were previously entitled and allowed to use the NHS, they are now told—having never been warned throughout possibly decades of residence—that they are not entitled to use the NHS.”⁹
11. As Lord Bowness said during the Committee debate in the House of Lords, “Our attitude to this amendment will help define the kind of country that we want to be.”¹⁰ Retributive and mercenary treatment of EU nationals was plainly not what the British public voted for, and the Government must act as not as if it was.

Guarantee EU nationals’ rights

⁷ Hansard, 1 March 2017, Volume 779, Column 814-5.

⁸ *The Independent*, ‘Fivefold increase in number of EU citizens held in UK detention centres since Tories took power’, 18 January 2017, available here:

<http://www.independent.co.uk/news/uk/politics/eu-citizens-detention-centres-immigration-detained-five-times-theresa-may-brexit-hostile-environment-a7534231.html>.

⁹ Hansard, 1 March 2017, Volume 779, Column 818-9.

¹⁰ Hansard, 1 March 2017, Volume 779, Column 834.

12. Liberty believes that the British government should lead by example, setting the tone for the withdrawal process by making strong commitments to EU nationals living in the UK. Such commitments, in the interests of fairness and respect for human rights, should be made as a matter of principle. EU nationals should not be treated as bargaining chips, nor should their rights be subject to negotiation nor made contingent upon the actions of other governments. Such an approach risks precipitating a dangerous race to the bottom as we vie with other regimes to offer increasingly inadequate protections to each others' citizens.
13. The EU Citizen's Directive specifies that EU nationals and their family members can move to other member states for an initial 3 month period and thereafter further conditions are to be introduced, including the requirement that the individual be a worker, self-employed, or otherwise self-sufficient, or in the process of seeking employment.¹¹ After five years' legal stay, individuals can obtain permanent residence.¹² EU citizens have the right to be joined by a spouse, civil partner, children under 21, and some dependant relatives.¹³ Rights to admission are also extended to unmarried partners and other dependant relatives.¹⁴
14. EU nationals and their families have built their lives on the basis of these rights and entitlements. To now be faced with the prospect of deportation, after years in the UK, has come as a severe shock to many – something to which many MPs attested from their constituency correspondence in the recent debate on the Withdrawal Bill.¹⁵ As the House of Lords Committee found, the human costs of this uncertainty are “severe”. Their report cites evidence of EU nationals’ worries over increasing hate crime and their future security – and says uncertainty around their status is potentially “fuelling xenophobic sentiment”. It demands the Government “urgently” fulfil its “moral obligation to provide certain and legal clarity”.
15. In the interests of fairness, legal certainty, and the right to respect for private and family life, Liberty believes that the existing EU law rights and entitlements for all EU nationals, and their families, must be guaranteed.

Protect UK nationals and their families as well

¹¹ Directive 2004/58/EC of the European Parliament and of the Council of 29 April 2004 ('the Citizens' Directive'), Articles 6 and 7.

¹² Citizens' Directive, Article 16.

¹³ Citizens' Directive, Articles 1 and 2.

¹⁴ Citizens' Directive, Articles 1 and 2.

¹⁵ See Hansard, 31 January 2017, Volume 620, Column 818 onwards, available here:

[https://hansard.parliament.uk/commons/2017-01-31/debates/C2852E15-21D3-4F03-B8C3-F7E05F2276B0/EuropeanUnion\(NotificationOfWithdrawal\)Bill](https://hansard.parliament.uk/commons/2017-01-31/debates/C2852E15-21D3-4F03-B8C3-F7E05F2276B0/EuropeanUnion(NotificationOfWithdrawal)Bill).

16. Equally, UK nationals who live in the EU face the same uncertainty. As the Joint Committee on Human Rights found, many do not know whether they can continue to live and work in the EU, or whether their children can remain in school with their friends – and even whether they can still receive health care.
17. By continuing to treat individuals as ‘bargaining chips’, the Government intensifies the uncertainty of UK citizens in the EU. Liberty urges Parliamentarians to protect their rights by ensuring reciprocal fair treatment for EU nationals in the UK and to signal to EU member states that the Brexit negotiations must respect EU and UK citizens’ rights. As Lord Hannay – who has been involved in previous EU negotiations – stated during Committee debate in the Lords, “[F]or us to move unilaterally to protect the rights of EU citizens here is in fact the best possible step towards safeguarding the rights of our own citizens elsewhere in the EU”.¹⁶ As Baroness Kennedy of the Shaws stated as well:

“This is about us speaking to what people need to put their fears and their anguish at bay. We have a real responsibility to those people, and in taking the responsibility for the ones whom we can make decisions about, we therefore take responsibility for our citizens living in other parts of the European Union.”¹⁷

Conclusion

18. **Liberty urges Members of Parliament to agree with Lords’ Amendment 1.**
19. This would ensure that EU nationals in the UK are treated fairly, guaranteeing the rights on which they have built their lives here in this country. Such a commitment will set the tone for the negotiations, helping ensure the equal treatment of UK nationals in the EU and founding the UK’s future position on a respect for human rights and equality.

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¹⁶ Hansard, 1 March 2017, Volume 779, Column 824.

¹⁷ Hansard, 1 March 2017, Volume 779, Column 833.