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Practical Consequences of Brexit for EU Citizens in the Context of Free Movement

[Praktyczne konsekwencje brexitu dla obywateli UE w kontekście swobodnego przepływu osób]

Abstract

Brexit, understood as the United Kingdom's decision to leave the European Union, formally implemented on 31 January 2020, is one of the most important events in contemporary European politics. One of the key aspects of this decision was the changes in freedom of movement, which had a direct impact on the citizens of the European Union Member States. Freedom of movement was one of the fundamental rights guaranteed to European Union citizens by the treaty principle of free movement of persons. In the period leading up to Brexit, EU citizens enjoyed the rights arising from the principle of free movement of persons, which allowed them to travel, take up employment, settle and study in the United Kingdom without having to complete additional visa or immigration formalities.

Following the United Kingdom's withdrawal from the European Union, legal regulations came into force which significantly restricted EU citizens' access to some of their previous rights. In particular, persons who did not complete the required formalities before the end of the transition period were subject to the national immigration regime established by the United Kingdom. This regime includes, among other things, a points-based system that makes the right to reside and work in the United Kingdom conditional on meeting certain criteria relating to education, professional qualifications and income.

The article analyses the practical consequences of Brexit for European Union citizens, with particular focus on changes in freedom of movement. The aim of the study is to examine the impact of new legal regulations on the daily lives of EU citizens in terms of exercising their rights to travel, settle, take up and pursue employment, and use public services in the United Kingdom. The article also highlights the challenges faced by EU citizens due to these changes and explore potential future directions for the United Kingdom's migration policy.

The author formulates the following research thesis: the provisions contained in the Brexit Withdrawal Agreement, in particular those relating to the right of EU citizens to

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free movement, were aimed at ensuring continuity and protection of their rights after the end of the transition period. However, in practice, the implementation of new immigration rules by the United Kingdom has led to the creation of significant formal and legal barriers that have significantly hampered the effective exercise of this right.

The various research methods used included, in particular, comparative analysis and analysis of normative acts affecting the legal status of European Union citizens after the United Kingdom's withdrawal from the EU. The research included an analysis of the content of the Agreement on the Withdrawal of the United Kingdom from the European Union, with particular emphasis on the provisions relating to the free movement of persons, as well as national legislation implementing the provisions of that agreement, including the European Union (Withdrawal Agreement) Act 2020 and the Immigration and Social Security Coordination (EU Withdrawal) Act 2020. The method of analysis and interpretation of legal documents was also used, focusing on regulations defining the status of EU citizens, in particular with regard to immigration requirements and application procedures, such as the EU Settlement Scheme. Furthermore, an empirical analysis was conducted based on a review of academic literature, including studies on the impact of the new regulations on the daily lives of EU citizens in the United Kingdom, which provided an in-depth and multifaceted picture of the practical consequences of Brexit.

Keywords: freedom of movement, right to settle, EU citizen, Withdrawal Agreement, Brexit.

The Essence of Free Movement

The freedom of movement for citizens of Member States and their family members within the EU entails the ability to move freely across this area, which is intrinsically linked to European Union citizenship.¹ It appears that holding the citizenship of one of the Member States is a key condition for enjoying the rights conferred by the treaty. However, the purpose of EU citizenship is not to extend the substantive scope of the treaty to purely domestic matters unrelated to EU law.² Thus, the acquisition or loss of citizenship of

¹ See G. Druesne, *Prawo materialne i polityki Wspólnot i Unii Europejskiej* [Substantive Law and Policies of the Communities and the European Union], Warszawa 1996, p. 93; see also A. Triandafyllidou, *Irregular Migration in Europe in the Early 21st Century* [in:] *Irregular Migration in Europe: Myths and Realities*, A. Triandafyllidou (ed.), Ashgate Publishing, Burlington 2012, p. 3.

² See joined cases C-64/96 and C-65/96, *Becker and Jacquet*, judgment of 5 Jun. 1997, ECLI:EU:C:1997:285, para. 23; C-148/02, *Carlos Garcia Apello v Belgian State*, judgment of 2 Oct. 2003, ECLI:EU:C:2003:539, para. 26.

a Member State is equivalent to the acquisition or loss of European Union citizenship.³

The principle of free movement primarily derives from Article 21 of the Treaty on the Functioning of the European Union (TFEU), which guarantees EU citizens the right to move and reside freely within the territory of the Member States, as well as from Article 45 TFEU, concerning the free movement of workers, prohibiting discrimination based on nationality in matters of employment, remuneration, and other working conditions. The fundamental secondary EU law act in the field of free movement of EU citizens is Directive 2004/38/EC of April 29, 2004, on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.⁴ The main premise of its provisions is to ensure the possibility of moving between Member States under terms identical to national regulations regarding the relocation within one's home country. The legislator's intention is to apply all possible facilitations and simplifications in the exercise of migration rights. In defining the beneficiaries of Directive 2004/38/EC, the EU legislator extended its scope to include all Union citizens and their family members who move to or reside in another Member State, as well as specific family members.

An indispensable condition for exercising the rights arising from the provisions of the aforementioned directive is actual migration and residence in another Member State. Theoretically, all EU citizens are the addressees of EU regulations on the free movement of persons. In practice, however, only those who move to another Member State benefit from these provisions, although the case law of the Court of Justice of the European Union (CJEU) does not always appear to confirm this principle.⁵ Nevertheless, the right to free movement within the Member States includes the right of entry and residence, the right to employment, the right to settle, the right to education and training, access to healthcare, the right to equal treatment, and the right to social benefits on an equal basis with the citizens of the host state. An inherent element of exercising freedom of movement within the European Union is the right of residence in the host Member State. According to Article 21(1) TFEU, every EU citizen has the right to reside in the territory of the Member States, subject to the restrictions and conditions provided for in the treaty and the measures adopted to implement it.⁶ The right of residence is categorized into three types:

³ See A. Gubrynowicz, *Obywatelstwo Unii Europejskiej – stan obecny i perspektywy* [in:] *Obywatelstwo Unii Europejskiej* [Citizenship of the European Union], *Zeszyty Ośrodka Informacji i Dokumentacji Europejskiej*, 9, Wydawnictwo Sejmowe, Warszawa 2008, p. 8.

⁴ Official Journal of the European Union L 158, p. 77, 30 April 2004.

⁵ See the case C-200/02, *Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department*, judgment of 19 Oct. 2004, ECLI:EU:C:2004:639, para. 18 and 19.

⁶ Cases C-456/02, *Michel Trojani v Centre public d'aide sociale de Bruxelles (CPAS)*, judgment of 7 Sept. 2004, ECLI:EU:C:2004:488, para. 31 and 32; C-291/05, *Minister voor Vreemdelingenzaken en Integratie v R. N. G. Eind*, judgment of 11 Dec. 2007, ECLI:EU:C:2007:771, para. 28.

- ◆ residence for up to three months,
- ◆ residence for more than three months, and
- ◆ permanent residence.⁷

EU citizens can reside in another Member State for up to three months without any formalities or conditions, except for the requirement to hold a valid identity card or passport. Residence for more than three months is granted to EU citizens under the following circumstances: if they have the status of a worker or are self-employed, if they possess sufficient financial resources, or if they have comprehensive sickness insurance.⁸ This right of residence also extends to EU citizens enrolled in a private or public institution recognized or funded by the host state for the purpose of studies or vocational training. These individuals must also have sufficient resources to avoid becoming a burden on the host state's social assistance system and must possess comprehensive health insurance. The right of permanent residence is granted to EU citizens and their family members who are not nationals of a Member State, provided they have continuously and lawfully resided in the host state for five years.⁹ The loss of permanent residence rights can only occur due to an absence exceeding two years, while temporary absences do not disrupt its continuity.

An essential element of the freedom of movement is the principle of equal treatment.¹⁰ This principle ensures that EU citizens exercising their right to free movement cannot be treated less favorably than the citizens of the country in which they reside. It applies to access to the labor market as well as to social and educational benefits. Additionally, this freedom also extends to the right of family members of EU citizens to move and settle on equal terms, even if they are not EU citizens. A particular expression of adherence to the principle of equal treatment can be found in Article 45(2) TFEU, which mandates the application of this rule in the areas of employment, remuneration, and other working conditions for workers from Member States.¹¹

In the social sphere, the prohibition of discrimination is enshrined in Article 7(2) of Regulation 492/2011.¹² This provision prohibits discrimination

⁷ P. Minderhoud, *Free Movement, Directive 2004/38/WE and Access to Social Benefits* [in:] *Rethinking the Free Movement of Workers: The European Challenges Ahead*, P. Minderhoud, N. Trimikliniotis (eds.), Wolf Legal Publ., Nijmegen 2009, p. 69; see F. Rossi dal Pozzo, *Citizenship Rights and Freedom of Movement in the European Union*, European Monographs, Kluwer Law International 2013, p. 61.

⁸ See more W. Kałamarz, *Swobodny przepływ osób i polityka wizowa* [in:] *Obszar wolności, bezpieczeństwa i sprawiedliwości Unii Europejskiej. Geneza, stan i perspektywy* [The European Union's Area of Freedom, Security and Justice: Origins, Current Situation and Prospects], F. Jasiński, K. Smoter (eds.), Komitet Integracji Europejskiej, Warszawa 2005, p. 110.

⁹ Directive 2004/38/EC, Chapter 4.

¹⁰ The principle of equal treatment is expressed in Article 18 TFEU, Article 45 TFEU, Article 24 of Directive 2004/38/EC, and Article 7 of Regulation 492/2011.

¹¹ See also the case C-332/91, *Beatrice Sellinger, Rosalba Del Maestro, Gillian Mansfield v Università degli Studi di Parma*, judgment of 5 Jun. 2008, ECLI:EU:C:1993:333.

¹² Official Journal of the European Union L 141, p. 1, 27 May 2011.

in the social and tax domains.¹³ According to the established case law of the Court of Justice of the European Union (CJEU), social benefits should not be interpreted narrowly, as they encompass all advantages granted to national workers either because of their status as workers or due to their residence within a given state. Extending these benefits to workers who hold the nationality of other Member States aims to support their mobility within the territory of the European Union.¹⁴

The freedom of movement of EU citizens and their family members is not an unconditional right. Article 21 of the Treaty on the Functioning of the European Union (TFEU) grants the right to freedom of movement and residence, subject to the restrictions and conditions laid down in the Treaties and measures adopted for their implementation. Article 27 of Directive 2004/38/EC, while regulating the migration of EU citizens, also sets out limitations on this freedom. As a general rule, EU citizens have the right to move between Member States under conditions almost identical to those governing movement within their country of origin. This principle was the main intention of the EU legislator when creating the freedom of migration. However, this freedom is not absolute. Member States may restrict it when necessary to protect their national interests. Justifications for such restrictions include considerations of public policy, public security, and public health. The measures available to Member States primarily include denying entry, prohibiting residence in the host state, or expulsion. A key factor qualifying behavior as contrary to public policy or public security is the existence of a sufficiently serious threat affecting a fundamental societal interest. The EU legislator has granted Member States the power to restrict freedom of movement only in cases where their vital national interests are at risk while simultaneously providing EU citizens with procedural safeguards to defend against the improper application of such restrictions.

A key element in the implementation of the freedom of movement of persons and services within the single market is the recognition of professional qualifications within the European Union.¹⁵ Regulations in this area allow EU citizens to take up employment in other Member States based on qualifications obtained in their country of origin, contributing to professional

¹³ See also J. R. Carby-Hall, *The Treatment of Polish and Other A8 Economic Migrants in the European Union Member States: A Research Programme Prepared for Commissioner for Civil Right Protection of the Republic of Poland*, Bureau of the Commissioner for Civil Right Protection, Warszawa 2008, p. 41.

¹⁴ See cases C-65/81, *Francesco Rein, Letizia Rein v Landeskreditbank Baden-Württemberg*, ff of 14 Jan. 1982, ECLI:EU:C:1982:6, para. 12; C-85/96, *Martinez Sala v Freistaat Bayern*, ff of 12 May 1998, ECLI:EU:C:1998:217, para. 25; C-213/05, *Wendy Geven v Land Nordrhein-Westfalen*, judgment of 18 Jul. 2007, ECLI:EU:C:2007:438, para. 12.

¹⁵ The primary legal act regulating the recognition of professional qualifications within the EU is Directive 2005/36/EC of 7 Sept. 2005 (OJ L 255, p. 22, 30 Sept. 2005), as amended by Directive 2013/55/EU. This Directive establishes common legal frameworks and procedures that facilitate the mutual recognition of professional qualifications between Member States.

mobility and labor market integration. The form of education is irrelevant, as long as it is recognized in the home country.¹⁶ To simplify procedures, a common system for the recognition of education and vocational training between Member States has been introduced across the EU. In the case of regulated professions, qualifications are automatically recognized based on the harmonization of minimum educational and training standards. In the case of non-regulated professions, the general system is applied. The host state compares the candidate's qualifications with the national requirements and may require supplementary training, such as completing an adaptation period or passing a skills test.

The freedom of movement within the European Union also includes the right to access healthcare in other Member States. Thanks to the European Health Insurance Card (EHIC), EU citizens can receive necessary medical services during a temporary stay in another country under the same conditions as residents of that country. Furthermore, according to Directive 2011/24/EU of March 9, 2011, on the application of patients' rights in cross-border healthcare,¹⁷ patients can plan treatment abroad and are entitled to partial or full reimbursement of costs, depending on the rules in their home country's health insurance system. Regulations on the coordination of social security systems protect patients' rights, enabling them to access healthcare regardless of where they work, reside, or retire.

Freedom of Movement After Brexit

Brexit, officially implemented on January 31, 2020, had a significant impact on the freedom of movement between the United Kingdom and the EU Member States. With the end of the transition period, which lasted until December 31, 2020, the United Kingdom ceased to be part of the single market and customs union, introducing new rules regarding the mobility of persons.¹⁸

The main legal regulations in the United Kingdom governing the legal status of EU citizens after Brexit are:

(1) the European Union (Withdrawal Agreement) Act 2020.¹⁹ This Act aims to align the UK legal system with the new post-Brexit conditions and implement specific provisions arising from the agreement, including those regarding the status of EU citizens, as well as the adoption of the EU Settlement Scheme,

¹⁶ See M. Kozuch, *Uznawanie kwalifikacji w Unii Europejskiej* [Recognition of Qualifications in the European Union], *EuroPrawo*, XIX, Warszawa 2014, p. 10.

¹⁷ Official Journal of the European Union, L 88, 4 April 2011, pp. 45–65.

¹⁸ See N. Nic Shuibhne, *EU Citizenship and Free Movement Rights*, Oxford University Press 2020, p. 301.

¹⁹ European Union (Withdrawal Agreement) Act 2020, C 37, on Jan. 9.

which enables EU citizens to obtain settled status or pre-settled status in the United Kingdom. These provisions implement the EU regulations contained in the agreement, but with specific details regarding the application procedures and documentation. The Withdrawal Agreement focuses on the general principles of protecting the rights of EU citizens, ensuring the continuation of these rights after Brexit, provided they complete the necessary procedures. The European Union (Withdrawal Agreement) Act 2020, on the other hand, implements the details of this agreement in UK domestic law, providing specific procedural and administrative regulations, such as the EU Settlement Scheme. Both documents are closely linked, with the Withdrawal Agreement setting the legal framework and the Act implementing these frameworks in practice, specifying the concrete steps EU citizens must take to retain their rights in the United Kingdom after Brexit.

(2) Immigration and Social Security Coordination (EU Withdrawal) Act 2020.²⁰ This Act regulates matters related to the immigration system after the end of the transition period, as well as the coordination of social security systems between the United Kingdom and the EU countries. The Act also modifies the rules concerning social benefits for EU citizens, including access to healthcare and other public services. It introduces a points-based immigration system for EU citizens and also introduces changes in the coordination of social security systems that were previously governed by EU regulations. EU citizens may be subject to different rules regarding access to social benefits such as unemployment benefits or pensions, depending on their status and length of stay in the UK. The Immigration and Social Security Coordination (EU Withdrawal) Act 2020 primarily focuses on new immigration and integration rules for EU citizens after the end of the transition period, including the introduction of a points-based system, which requires EU citizens to meet new criteria such as having a job offer, appropriate salary, education, and language proficiency to obtain residence rights. It also introduces changes to the social security system, lowering the level of access to benefits, including for EU citizens who do not meet the new requirements. In contrast, the Withdrawal Agreement focuses on protecting the rights of EU citizens who were residing in the UK before the end of the transition period and also addresses issues related to the coordination of social security systems, ensuring continuity of access for EU citizens to social security benefits under similar conditions to those before Brexit. In summary, the Immigration and Social Security Coordination (EU Withdrawal) Act 2020 implements the provisions resulting from the Withdrawal Agreement by introducing new immigration rules, while the Withdrawal Agreement itself safeguards the rights of EU citizens who were residing in the UK before the end of the transition period, ensuring continuity of those rights.

²⁰ Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020, C 20, of Nov. 11.

In the context of the right to free movement, the most important provisions of the Withdrawal Agreement²¹ are those related to the status of EU citizens in the United Kingdom and UK citizens in EU Member States.²² These rules are primarily outlined in the Protocol on Citizens' Rights and in articles regarding transitional provisions.

A fundamental element of the Withdrawal Agreement is ensuring the protection of the rights of EU citizens who lived in the United Kingdom or the European Union before the end of the transition period, including the right to residence, work, healthcare, education, social benefits, and pensions. Article 10 of the agreement, which regulates matters concerning individuals covered by the rights arising from the agreement, including the free movement and residence of EU citizens and their families after the end of the transition period, also defines the scope of beneficiaries. These include EU citizens who were exercising their right to reside in the United Kingdom under EU law before the end of the transition period and continue to reside there; EU citizens as frontier workers, who were benefiting from frontier worker rights in the United Kingdom before the end of the transition period and continue to do so; UK citizens exercising their right to reside in an EU Member State before the end of the transition period and continue to reside there; UK citizens as frontier workers, benefiting from frontier worker rights in an EU Member State before the end of the transition period and continue to do so; family members of EU or UK citizens, including children, direct relatives, or children born after the end of the transition period, provided certain conditions are met, such as residing in the host state in accordance with EU law before the end of the transition period.²³

The agreement further addresses the issue of residence, stating in Article 11 that the right of residence for individuals who were entitled to reside in the territory of the United Kingdom (or an EU Member State) under EU law before the end of the transition period is not automatically revoked after Brexit. According to the provisions of Article 11, these individuals can continue residing under the same conditions that applied before the end of the transition period, provided they meet the required criteria. Therefore, the rights of citizens are protected as long as they are covered by the provisions of the Withdrawal Agreement and meet the requirements for legal residence.

According to the provisions of the agreement, particularly Article 18, the rules regarding access to social security systems, including healthcare, pensions, sick leave, maternity benefits, and other social services, have been

²¹ Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, Official Journal of the European Union C1 384/1, 2019, Nov. 12.

²² See C. Barnard, *The Substantive Law of the EU: The Four Freedoms*, Oxford University Press 2022, p. 459 ff.

²³ See S. Peers, *EU Justice and Home Affairs Law*, Oxford University Press 2023, p. 157 ff.

established.²⁴ Article 18 of the Withdrawal Agreement, concerning access to social security systems, aims to protect citizens who, as a result of Brexit, should not lose access to social benefits they were entitled to before December 31, 2020.²⁵ This primarily applies to individuals who were living and working in the United Kingdom at the time of Brexit, but also to British citizens who, as a result of the new legal status after Brexit, have settled in EU member states.²⁶ Regarding healthcare, individuals who were covered by the UK's healthcare system before Brexit retain their rights to healthcare services based on the Withdrawal Agreement. This agreement stipulates that EU citizens living in the UK will still be able to access healthcare under the National Health Service (NHS) in the UK, provided they meet specific conditions.²⁷ According to the new regulations, EU citizens who have settled or pre-settled status can continue to use NHS services on the same basis as UK citizens. Those who do not obtain this status may face additional requirements, such as charges for medical services or limited access to certain types of care. Under the Withdrawal Agreement, EU citizens who legally reside in the UK still have access to NHS healthcare services, but certain conditions must be met, such as the length of stay in the country and having the appropriate immigration status. Additionally, individuals applying for a work visa must pay the Immigration Health Surcharge (IHS), which grants them access to public healthcare services, but only if their visas entitle them to use the NHS. For those who do not meet these requirements, access to healthcare may be restricted, and some services may incur additional charges.²⁸ For example, access to dental or specialist services may require a fee that was not previously applicable to EU citizens.

Under the provisions concerning pensions and benefits, individuals who had already earned entitlement to benefits in the country where they lived or worked do not lose them as a result of Brexit. This means they can still rely on pensions or other benefits to which they had acquired the right before the end of the transition period. Similarly, with regard to sickness or maternity benefits, individuals who meet certain conditions can still apply for benefits in accordance with the rules that were in place before Brexit. Article 18 ensures that there is no change in access to these benefits, as long as the person was already entitled to receive them before the end of the transition period.²⁹ In practice, the Withdrawal Agreement aimed to ensure that EU citizens (and UK citizens as well) would not have to face sudden and unexpected losses of rights they had relied on due to their previous years of work and life in another

²⁴ C. Barnard, *The Substantive...*, p. 439 ff.

²⁵ S. Peers, *Brexit: The Legal Framework for Withdrawal from the EU*, Oxford University Press 2020, p. 213 ff.

²⁶ K. Armstrong, *Brexit Time: Leaving the EU – Why, How and When?*, Cambridge University Press 2017, p. 172 ff.

²⁷ M. Dougan, *The UK after Brexit: Legal and Policy Challenges*, Intersentia, Cambridge–Antwerp 2021, p. 97 ff.

²⁸ N. Nic Shuibhne, *EU Citizenship...*, p. 329 ff.

²⁹ See P. Craig, Gráinne de Búrca, *EU Law: Text, Cases, and Materials*, Oxford University Press 2018, p. 1050 ff.

er member state. In this way, Article 18 played an important role in protecting citizens' rights, providing them with certainty that the social benefits they had been receiving would not be canceled due to Brexit, and their status would be recognized under the previous rules.

Article 20 of the Withdrawal Agreement, concerning the recognition of previous residence periods, is particularly important for EU citizens who lived in the United Kingdom before Brexit. The rules were established to allow them to apply for the so-called "settled status" or "pre-settled status." EU citizens who had lived in the UK for at least 5 years before the end of the transition period (Dec. 31, 2020) could apply for settled status, which allowed them to remain in the UK and enjoy full rights, such as the right to work, access to healthcare, social benefits, and pensions. On the other hand, EU citizens who had lived in the UK for less than 5 years could apply for pre-settled status.³⁰ This status was granted for a period of up to 5 years, with the possibility of extension if certain conditions were met, aimed at ensuring that the individual had actually resided in the United Kingdom for the required period.

The application procedure was relatively simple, but it required the applicant to provide documentation of their residence in the United Kingdom. Applications for settled³¹ or pre-settled status were submitted online using the government's application portal. To complete the process, the applicant had to create an account, provide personal information, and then submit the required documents proving their residence in the United Kingdom. For settled status, it was necessary to provide evidence of a 5-year period of residence in the UK. Documents could include, for example, a residence card, utility bills, rental agreements, tax system records, and other documents showing presence in the country for the required period. For pre-settled status, it was sufficient to document a shorter period of stay (at least 1 day in 2020). Applications for settled or pre-settled status had to be submitted by the end of June 2021 (after this date, individuals who did not submit applications could lose their right to remain). It is worth noting that individuals applying for settled status could do so until June 30, 2021, while those who were granted pre-settled status had time to convert it to settled status by the end of their fifth year of residence in the UK. After submitting the application, the applicant would receive a decision within a few weeks, and if the application was accepted, they would receive either pre-settled³² or settled status. It is important to

³⁰ See more S. Fella, M. Gower, C. J. McKinney, UK-EU Withdrawal Agreement: Implementation of Citizens' Rights, House of Commons Library 2023, Nov. 28, No 9657, p. 12.

³¹ See also M. Suska, Dyskusja na temat praw obywateli Unii Europejskiej po brexicie [Debate on Issues Concerning the EU Citizen's Rights After Brexit], *Roczniki Administracji i Prawa* 2017, 17, 2 ["Annuals of the Administration and Law"], p. 127

³² See more M. Fernández-Reino, M. Sumption, Report. How Secure is Pre-Settled Status, Centre on Migration, Policy and Society (COMPAS), University of Oxford 2022, Mar. 29, p. 4.

emphasize that the application process was less complicated than traditional immigration visas, as it did not require going through complex procedures.

The issue of the rights of family members of EU citizens³³ who arrived in the United Kingdom after the end of the transition period was regulated by Article 22 of the Withdrawal Agreement. Although they could be admitted to the territory of the UK, their rights to settle were dependent on meeting certain conditions. According to this article, family members of an EU citizen who did not meet the requirements for obtaining settled status had to go through the application procedure, where they had to prove that their relationship with the EU citizen was genuine and also meet other requirements, such as having sufficient means of support and access to appropriate health insurance. Although Article 22 of the Agreement allowed family members of EU citizens to remain in the United Kingdom,³⁴ these conditions were significantly more restrictive than those that applied to individuals arriving before the end of the transition period.

One of the key elements of the United Kingdom's migration policy change after leaving the European Union was the introduction of a new immigration system.³⁵ The decision to leave the EU altered the way EU citizens were treated, as they had previously been able to freely settle and work in the UK.³⁶ The new system, which came into effect on January 1, 2021, represented a significant shift in the existing regulations, introducing rules that were more similar to those applied to citizens of non-EU countries. Before Brexit, EU citizens enjoyed the principle of free movement, meaning they could work, settle, study, access healthcare, and travel to the UK without needing visas or permits, on equal terms with British citizens. However, after Brexit, the UK decided to end the free movement and implement a new immigration system that restricted access to the labor market and settlement for EU and European Economic Area (EEA) citizens. This system is based on a "points-based" system, which means that individuals applying for a visa or residence permit must meet specific requirements that are assigned points. The system considers various factors, such as having a job offer in the UK, salary level, education, English language proficiency, and professional experience. A candidate applying for a work visa must accumulate a specified number of points based on these cri-

³³ See more N. Cambien, *Residence Rights for EU Citizens and Their Family Members: Navigating the New Norms*, "European Papers" 2018, 3, 3, pp. 1333 ff.

³⁴ See more G. More, *From Union Citizen to Third-Country National: Brexit, the UK Withdrawal Agreement, No-Deal Preparations and Britons Living in the European Union*. *Social Justice, Brexit and Other Challenges* [in:] *European Citizenship under Stress*, Nijhoff Studies in European Union Law 2020 Aug., 16, p. 469.

³⁵ C. J. McKinney, M. Gower, G. Sturge, *The UK's New Points-Based Immigration System*, House of Commons Library 2022, Sept. 27, No CBP-8911, p. 6.

³⁶ See more G. Sturge, *How Has Immigration Changed Under the UK's New 'Points Based' System?*, House of Commons Library 2022, Sept. 27 [accessed: 27.01.2025] https://commonslibrary.parliament.uk/how-has-immigration-changed-under-the-uks-new-points-based-system/?utm_source=chatgpt.com.

teria. To apply for a visa, the candidate must achieve at least 70 points.³⁷ Points are awarded based on various factors, such as the offered salary (higher wages grant additional points), holding the required professional qualifications, and other aspects, such as the level of English proficiency, which also affects the points awarded.³⁸

The new post-Brexit regulations significantly limited the employment opportunities for low-skilled workers in the United Kingdom.³⁹ While previously, EU citizens could freely work in various industries, including sectors requiring minimal skills, after the end of the transition period, the UK introduced a system in which most job applicants must meet specific qualification requirements.⁴⁰ Under the new immigration system, individuals who do not possess high qualifications or do not perform work considered skilled have much more difficult access to the job market. Despite the restrictive requirements introduced after Brexit, the United Kingdom still offers numerous employment opportunities for specialists and highly qualified workers. Sectors such as technology, healthcare, engineering, finance, and science continue to be key areas where skilled workers are sought. In particular, the UK focuses on attracting experts in fields like IT, artificial intelligence, biotechnology, and finance, where advanced knowledge and skills are required. EU citizens who hold the necessary qualifications can apply for visas under the skilled worker system. These individuals can also benefit from preferences in the points-based system, which makes it easier for them to obtain a work permit in the UK. It is also worth noting that the UK offers special migration programs for individuals with skills in specific professions. For example, in the healthcare sector, individuals applying for jobs in medical professions can benefit from facilitation in obtaining a visa, especially if they have a job offer within the NHS (National Health Service). Similar exemptions are available for scientists, engineers, IT specialists, and those working in environmental protection sectors.

The points-based system aims to attract highly skilled workers, which aligns with the UK government's policy to focus on immigrants who can contribute more to the economy. Under this system, there are no longer any

³⁷ See P. W. Walsh, Policy Primer: The UK's 2021 Points-Based Immigration System, the Migration of Observatory, the University of Oxford 2021, May 17, [accessed: 28.01.2025] <https://migrationobservatory.ox.ac.uk/resources/primers/policy-primer-the-uks-2021-points-based-immigration-system/>.

³⁸ See A. Radziwinowiczówna, O. Lewis, The Post-Brexit Legal Framework for International Migration in the UK: Differentiated Deportability of Poor Europeans?, Centre of Migration Research Working Papers, No. 126/184, University of Warsaw, Warszawa 2021, p. 14.

³⁹ See J. Summers, R. Hesketh, M. Kleinman, Implications of the Post-Brexit Immigration System for Temporary Migration Router, King's College London, the Policy Institute, p. 4 [accessed: 28.01.2025] <https://www.kcl.ac.uk/policy-institute/assets/implications-of-the-post-brexit-immigration-system-for-temporary-migration-routes.pdf>.

⁴⁰ See more M. Dias-Abey, K. Bales, Migration and Work in the Post-Brexit UK, Law Working Papers Series, University of Bristol 2024, Paper No 003, p. 18.

preferences for EU citizens, meaning that citizens of EU Member States must meet the same requirements as citizens of other non-EU countries. In practice, this means that all candidates must apply for a visa, and the decision to grant it is based on meeting certain conditions.⁴¹ The system also introduced new rules for students.⁴² EU students must now apply for a student visa, which is granted based on the requirements for admission to a university and having sufficient funds to support themselves in the UK. EU citizens wishing to study in the UK must now meet specific tuition fee requirements. Before Brexit, EU citizens were treated on an equal footing with UK citizens, and tuition fees for EU students were the same as for domestic students. After the end of the transition period, EU students wishing to study at a higher education level in the UK are treated the same as non-EU students and may be required to pay higher tuition fees. Additionally, EU citizens who did not obtain settled status may not have access to certain forms of financial support, such as student loans. As a result, many EU students may be forced to pay higher tuition fees or seek alternative sources of funding. It is also important to note that after the end of the transition period, EU citizens lost access to some privileges, such as the right to work after graduation without needing to apply for additional permission.

The introduction of the new immigration system was also aimed at controlling the number of people coming to the United Kingdom, especially in light of concerns about excessive immigration. One of the main goals of the government was to focus on highly skilled immigrants, which was intended to enable better integration of these individuals into the labor market and British society. The new immigration system not only affected EU citizens but also citizens of other countries who wanted to settle or work in the United Kingdom. On the one hand, the new rules offer greater employment opportunities for people with qualified skills, but on the other hand, they may pose a barrier for less qualified individuals who previously benefited from simplified immigration procedures. The criteria for obtaining a visa have become more demanding, and a lack of sufficient points may result in a visa refusal.

The United Kingdom introduced a series of changes regarding the free movement of EU citizens, which had a significant impact on travel to the country for both tourism and business purposes. EU citizens, who previously benefited from the free movement of people, had to adapt to the new immigration regulations after the transitional period ended, including visa requirements, border controls, and travel documents. Since January 1, 2021, EU

⁴¹ See more M. Pazzona, F. Fil, UK Immigration After Brexit, Centre for Law, Economics and Finance, Brunel University London 2023, Aug., p. 15.

⁴² See D. A. Vahtera, The Impact of Brexit on Students, Tallinn University School of Governance, Law and Society [accessed: 07.01.2025] https://www.researchgate.net/publication/365853664_THE_IMPACT_OF_BREXIT_ON_STUDENTS, p. 5 ff.

citizens must apply for a visa if they plan to stay in the United Kingdom for more than six months. This requirement does not apply to tourists or people traveling for short-term business visits. For such trips, EU citizens can enter the United Kingdom without needing a visa, provided their stay does not exceed six months. However, they must meet the new passport and document requirements, including having a valid passport or ID card, depending on the UK's border requirements. An important point is that since Brexit, EU citizens can no longer enter the United Kingdom solely with an ID card if their stay is to last longer than six months. For long-term stays, they must obtain the appropriate visa, depending on the purpose of their trip, such as a student, work, or family visa.

As part of the new regulations, the United Kingdom also introduced an Electronic Travel Authorisation (ETA) system,⁴³ which applies to certain EU Member States. Before traveling, individuals from these countries must apply for approval to enter, verifying information such as the purpose of their trip, health status, and sufficient financial means. For EU citizens planning long-term stays, these requirements are part of a larger immigration process that requires meeting specific criteria, such as proof of sufficient funds for living and health insurance.

EU citizens must also undergo passport control upon entering the United Kingdom. In practice, this means that every individual, regardless of the purpose of their trip, is required to present a valid travel document and may be asked for additional documents, such as a return ticket, hotel reservation confirmation, proof of sufficient financial means, or health insurance. In addition, as part of security procedures, travelers to the United Kingdom may be asked to undergo biometric tests, such as facial scans, fingerprints, or photographs.

The changes following Brexit also have implications for individuals traveling to the United Kingdom for business purposes. For short-term visits, such as business meetings or conferences, EU citizens can still travel to the United Kingdom without a visa, provided their stay does not exceed 6 months. However, business trips related to long-term projects or work now require applying for the appropriate visa. Just like with tourism, these individuals must comply with the new immigration requirements, such as presenting a passport, proof of the purpose of the trip, or additional documents confirming the appropriateness of their visit.

⁴³ See more C. J. McKinney, *Electronic Travel Authorisations: What's the ETA?*, House of Commons Library, 24 April, 2023 [accessed: 28.01.2025], <https://commonslibrary.parliament.uk/electronic-travel-authorisations-whats-the-eta/>.

The Future of the Freedom of Movement of EU Citizens to the United Kingdom

After Brexit, the future of the freedom of movement of EU citizens to the United Kingdom is marked by certain uncertainties, which will depend on the development of the UK's immigration policy and its ongoing relationship with the European Union. While restrictions currently apply regarding entry, residence, and employment for EU citizens, future changes in immigration legislation and the long-term effects of Brexit could significantly impact the shape of these relations, as well as the lives of EU citizens who plan to settle in the UK or take advantage of the opportunities to move to the country.

After leaving the European Union, the United Kingdom introduced an immigration system aimed at controlling the influx of citizens from outside the UK, including EU citizens. However, this system is still under analysis and potential modifications may occur in the future. The UK government has already announced that the points-based system currently in place for EU citizens may be adjusted depending on the needs of the economy, as well as based on the experiences from the first years after leaving the European Union. In the future, changes may be implemented to allow for greater flexibility in accepting immigrants, particularly in specialized sectors of the economy facing labor shortages. On one hand, the UK may seek to facilitate procedures for highly skilled workers to meet the demands of the labor market in sectors such as IT, healthcare, and science. On the other hand, it may introduce more restrictive rules for individuals with lower qualifications, which could mean that EU citizens seeking work in these areas will have to meet higher requirements. This could also apply to individuals looking for employment in sectors requiring lower qualifications, such as agricultural work or services.

In the context of future changes, an important aspect is the potential introduction of more varied visa applications, which would take into account the specific needs of the UK's economy. Potential policy changes may also include new rules for EU citizens who wish to stay in the UK for educational, tourist, or business purposes. It is also worth noting that the UK may seek to renegotiate agreements with the EU, including those regarding the freedom of movement, which could affect immigration conditions.

The long-term effects of Brexit on EU citizens in terms of freedom of movement have a significant impact on their daily lives, professional situations, and social circumstances. First and foremost, the end of the transition period means that EU citizens, who previously enjoyed the right to freely move and work in the United Kingdom, must adapt to new regulations. A predicted long-term consequence is the necessity to meet formal requirements, such

as obtaining settled or pre-settled status, in order to legally reside and work in the UK. These changes may result in reduced mobility for EU citizens, especially for those who fail to meet immigration status requirements. This means that many EU citizens, who were previously able to move freely and settle in the UK, may face difficulties related to legal residency and access to employment or public services. The reduction in the number of EU citizens in the labor market could affect the functioning of certain industries, particularly those relying on the employment of low-skilled workers, such as the agricultural sector, services, and social care.

In the long-term perspective, Brexit also impacts the reduced flow of students, interns, and volunteers, as EU citizens must obtain the appropriate student or work visa, which is hindered by point-based requirements and high fees related to education and visas. The decrease in the number of students from the EU may affect the academic culture of the United Kingdom and access to skilled personnel in many fields. Additionally, Brexit may lead to the gradual phasing out of cooperation between the United Kingdom and the European Union in the areas of exchange programs, scientific research, and professional collaboration. This could limit the mobility of individuals who previously participated in programs such as Erasmus+ or Horizon Europe. As a result, EU citizens wishing to participate in such programs will need to meet additional requirements to engage in these initiatives in the UK.

In summary, the future of the free movement of EU citizens to the United Kingdom is full of challenges that will shape depending on the UK's immigration policy and its future relationship with the EU. Potential changes in immigration legislation and the long-term effects of Brexit may reduce the mobility of EU citizens, as well as impact their professional, educational situations and access to public services.

Changes, Practical Implications, and Challenges

One of the main changes that occurred after Brexit was the loss of the right to freedom of movement for EU citizens to the United Kingdom. Before Brexit, EU citizens could freely travel, work, study, and settle in the United Kingdom, benefiting from the rights granted under the EU principle of free movement of persons. After leaving the EU, these rules were replaced by a more restrictive immigration system that requires EU citizens to meet specific criteria in order to gain entry, work, or settle. A points-based system⁴⁴ was introduced, linking

⁴⁴ See more C. C. Cirlig, EU and UK Citizens' Rights After Brexit. An Overview, European Parliamentary Research Service, PE 651.975 – 2020, Jun., p. 14.

access to the labor market and other rights to meeting specific requirements, such as having the appropriate professional qualifications, salary levels, or English language proficiency. Additionally, these changes also included new rules regarding entry for tourism, educational, or business purposes, where EU citizens now need to apply for the appropriate visa or approval for entry. Travel requirements were also introduced, including the need to have sufficient financial means and a health check.

From the perspective of EU citizens, these changes carry a number of practical implications. For many individuals who previously benefited from the right to freedom of movement, the new regulations mean the need to adapt to more formal and complex application procedures. Currently, EU citizens who wish to settle in the United Kingdom must obtain settled or pre-settled status, which requires meeting criteria such as a specified period of residence in the country and proving sufficient financial means. Additionally, these individuals must be aware of deadlines for submitting their applications to avoid losing their right to stay legally. Changes in immigration policy also affect the professional mobility of EU citizens. The introduction of a points-based system means that EU citizens seeking employment in the United Kingdom must meet specific requirements related to qualifications, salary, and skills. For many, this could be a barrier, especially for those who wish to work in sectors requiring lower qualifications, such as agricultural work or services. In practice, these changes could also impact the education and tourism sectors. EU citizens who previously traveled to the United Kingdom for educational or tourism purposes must now apply for a student or tourist visa, which involves additional costs and formalities. For students, the change in regulations may also affect tuition fees, which have been increased for EU citizens, making the United Kingdom less accessible as an educational destination.

The challenges faced by EU citizens in connection with Brexit extend beyond changes in the regulations regarding freedom of movement. In the longer term, there are many issues that could influence the further development of the United Kingdom's immigration policy and its relations with the European Union. Firstly, the United Kingdom will need to adapt its immigration system to the changing labor market and economic situation. There is a possibility that some sectors, especially those dealing with a shortage of skilled labor, will need to introduce additional exemptions in the points-based system or open new immigration pathways to attract workers from the EU. Another challenge will be maintaining relations with EU countries in the context of citizen mobility, which may include renegotiating agreements on professional cooperation, academic exchange, or participation in programs such as Erasmus. From the perspective of EU citizens, the long-term effects of Brexit may involve the loss of benefits previously resulting from full integration within the European Union, potentially leading to reduced mobility and

career development opportunities. Additionally, the United Kingdom may face challenges in integrating new immigrants and ensuring they have equal access to public services such as healthcare and education. The adaptation process could be time-consuming and costly for both immigrants and the UK's administrative systems, potentially leading to social tensions or challenges related to managing diversity.

Reference to the Thesis

The regulations contained in the Withdrawal Agreement between the United Kingdom and the European Union were indeed intended to ensure the continuity of EU citizens' rights, particularly in terms of free movement, after the transition period. Article 13 of the Agreement guaranteed EU citizens and their family members the right to reside in the United Kingdom under previous rules, while Article 22 addressed the rights of family members of EU citizens arriving after the transition period. However, in practice, the new immigration rules introduced by the United Kingdom have significantly restricted the actual ability to exercise these rights. Firstly, the application process proved to be complicated for many individuals, especially for groups vulnerable to exclusion, such as the elderly, people with disabilities, or those without access to modern technology. Despite efforts by the UK government to inform EU citizens about the need for registration, not all eligible individuals managed to submit their applications before the final deadline. As a result, many people found themselves in an irregular status, affecting their rights to employment, healthcare, and social benefits. Secondly, the end of free movement and the introduction of a new points-based immigration system created significant barriers for EU citizens who wished to work in the United Kingdom after the transition period. The new regulations require meeting specific criteria, such as salary levels or professional qualifications, which have significantly limited employment opportunities for EU citizens in lower-skilled sectors such as hospitality, social care, and agriculture. Furthermore, the introduction of visas and administrative obligations for EU citizens traveling to the United Kingdom for professional or educational purposes has resulted in additional mobility challenges. This particularly affects posted workers, students, and entrepreneurs conducting cross-border business activities.

In conclusion, although the Withdrawal Agreement aimed to ensure the continuity of EU citizens' rights, the practical implementation of new immigration regulations by the United Kingdom has significantly restricted the exercise of the right to free movement. Consequently, many EU citizens face

difficulties in accessing the labor market, public services, and settlement opportunities, posing challenges both for individuals and for relations between the EU and the United Kingdom.

Conclusions

From the perspective of legal regulations, Brexit led to the termination of the previous rules on the free movement of EU citizens within the United Kingdom, and the introduction of new immigration laws had a significant impact on the ability to stay legally, work, and access the social security system. Regulations such as the Withdrawal Agreement, along with implementing acts such as the European Union (Withdrawal Agreement) Act 2020 and the Immigration and Social Security Coordination (EU Withdrawal) Act 2020, introduced complex application procedures that could make life difficult for EU citizens who do not meet the new requirements in the UK. Although the Withdrawal Agreement guarantees the protection of EU citizens' rights, including the right to reside and work in the United Kingdom, in practice, the application process, such as within the framework of the EU Settlement Scheme⁴⁵, involves considerable bureaucracy and the risk of not obtaining settled status for those who fail to complete the formalities. At the same time, the introduction of a points-based system, based on requirements related to employment, education, and language skills, changes the way EU citizens are perceived, treating them on equal terms with citizens of non-EU countries, which affects mobility and the integration of these individuals into British society.

The data indicates that although the new immigration regulations ensure the continuity of some rights for EU citizens, they nevertheless represent a significant barrier to their daily lives. EU citizens now face greater difficulties with administrative procedures, which can lead to feelings of uncertainty and limited integration within UK society. In practical terms, Brexit has therefore resulted in a substantial restriction on the free movement of EU citizens, which goes beyond the mere change of regulations and has real consequences for the quality of their lives in the new, post-Brexit environment.

⁴⁵ See more S. Fella, M. Gower, C. J. McKinney, UK-EU Withdrawal..., p. 9.

Abstrakt

Brexit, rozumiany jako decyzja Zjednoczonego Królestwa o wystąpieniu z Unii Europejskiej, formalnie zrealizowana 31 stycznia 2020 roku, stanowi jedno z najważniejszych wydarzeń współczesnej polityki europejskiej. Jednym z kluczowych aspektów tej decyzji były zmiany w zakresie swobody przemieszczania się, które miały bezpośredni wpływ na obywateli państw członkowskich Unii Europejskiej. Swoboda przemieszczania się była jednym z fundamentalnych praw, które gwarantowała obywatelom Unii Europejskiej traktatowa zasada swobody przepływu osób. W okresie poprzedzającym brexit obywatele UE korzystali z uprawnień wynikających z zasady swobodnego przepływu osób, umożliwiającą im: podróżowanie, podejmowanie zatrudnienia, osiedlanie się oraz kształcenie na terytorium Zjednoczonego Królestwa bez konieczności dopełniania dodatkowych formalności wizowych lub imigracyjnych.

Po wystąpieniu Zjednoczonego Królestwa z Unii Europejskiej weszły w życie regulacje prawne, które w istotnym zakresie ograniczyły dostęp obywateli UE do części dotychczas przysługujących im uprawnień. W szczególności osoby, które nie dopełniły wymaganych formalności przed zakończeniem okresu przejściowego, zostały objęte krajowym reżimem imigracyjnym ustanowionym przez Zjednoczone Królestwo. Reżim ten obejmuje między innymi system punktowy, uzależniający możliwość uzyskania prawa pobytu i pracy od spełnienia określonych kryteriów dotyczących poziomu wykształcenia, kwalifikacji zawodowych oraz wysokości osiągniętych dochodów.

W artykule podjęto analizę praktycznych konsekwencji brexitu dla obywateli Unii Europejskiej, ze szczególnym uwzględnieniem zmian w zakresie swobody przemieszczania się. Celem opracowania jest zbadanie wpływu nowych regulacji prawnych na codzienne funkcjonowanie obywateli UE – w kontekście realizacji ich prawa do: podróżowania, osiedlania się, podejmowania i wykonywania pracy, a także korzystania z usług publicznych na terytorium Zjednoczonego Królestwa. W artykule omówiono również główne wyzwania, przed którymi stają obywatele UE w związku z wprowadzonymi zmianami legislacyjnymi, jak również przedstawiono potencjalne kierunki ewolucji polityki migracyjnej Zjednoczonego Królestwa w przyszłości.

Autorka formułuje następującą tezę badawczą: regulacje zawarte w umowie o wystąpieniu z Unii Europejskiej, w szczególności postanowienia odnoszące się do prawa obywateli UE do swobodnego przemieszczania się, były ukierunkowane na zapewnienie ciągłości oraz ochrony ich praw po zakończeniu okresu przejściowego. Jednak w praktyce implementacja nowych przepisów imigracyjnych przez Zjednoczone Królestwo doprowadziła do powstania istotnych barier o charakterze formalnoprawnym, które znacząco utrudniły efektywną realizację tego prawa.

Zastosowane zróżnicowane zestawy metod badawczych objęły w szczególności analizę porównawczą oraz analizę aktów normatywnych, mających wpływ na status prawny obywateli Unii Europejskiej po wystąpieniu Zjednoczonego Królestwa z UE. W ramach badań przeprowadzono analizę treści umowy o wystąpieniu Zjednoczonego Królestwa z Unii Europejskiej, ze szczególnym uwzględnieniem przepisów odnoszących się do swobody przemieszczania się osób, a także ustawodawstwa krajowego implementującego postanowienia tej umowy, w tym European Union (Withdrawal Agreement) Act 2020

oraz Immigration and Social Security Coordination (EU Withdrawal) Act 2020. Zastosowano również metodę analizy i wykładni dokumentów prawnych, koncentrując się na regulacjach określających status obywateli UE, w szczególności w zakresie wymogów imigracyjnych oraz procedur aplikacyjnych, takich jak EU Settlement Scheme. Ponadto przeprowadzono analizę empiryczną opartą na przeglądzie literatury naukowej, w tym badań dotyczących wpływu nowych regulacji na codzienne funkcjonowanie obywateli UE w Zjednoczonym Królestwie, co umożliwiło uzyskanie pogłębionego i wieloaspektowego obrazu praktycznych konsekwencji brexitu.

Słowa kluczowe: swoboda przemieszczania się, prawo do osiedlania się, obywatel UE, umowa o wystąpieniu, brexit.

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