

Professor Michaela Benson – Written evidence (CIT0008)

Inquiry into Citizens' Rights

Written evidence submitted by [Professor Michaela Benson](#), Professor in Public Sociology, Lancaster University and follow up in an direct invitation from the committee to submit such evidence following the presentation of oral evidence on 25 May 2021.

The submitted evidence is drawn ESRC-funded research — **BrExpats: Freedom of Movement, citizenship and Brexit in the lives of Britons resident in the EU27** [Grant Number ES/R000875/1]^[1] and **Rebordering Britain and Britons after Brexit (MIGZEN)** [Grant Number ES/V004530/1]^[2]. The BrExpats team conducted research with a representative sample of UK nationals living across the EU27 over the course of the Brexit negotiations, foregrounding the consequences of Brexit and the loss of EU citizenship for how they live their lives. It produced the largest qualitative dataset—600 respondents—ever compiled of British citizens living abroad. MIGZEN includes follow-up research with British citizens living in the EU and the close examination of the implementation of citizens' rights.

Summary of key points

- I. The paucity of statistics about British citizens living in the EU mean make it difficult to evaluate the progress of the implementation of citizens' rights
- II. The current shortfall in the numbers of applications is cause for alarm in countries operating constitutive systems for registration and particularly in France
- III. Vulnerable and hard-to-reach populations are at risk of falling through the gaps in current provisions
- IV. Trust in the UK Government is at an all-time low about British citizens living in the EU

The paucity of statistics

The statistics produced by the Office for National Statistics (ONS) in 2018 documented that 784,900 British citizens are long-term resident in the EU26 (excl. Ireland) were most likely to be impacts by Brexit.

This data has not been updated by ONS since then to include those who may have moved in the meantime, either leaving the UK to settle in the EU, or returning to the UK. It is not only that this data is outdated; the limitations of these statistics mean that they even when they were first released they underestimate the numbers of British citizens living in the EU who need to be protected by the citizens' provisions.^[3]

The statistics collated in this ONS data are drawn from a variety of data sources, which turn draw from statistics collected by different member states using different methodologies and taking place at different points in time. This

highlights that there are various points at which errors may be introduced into the data.

Some member states draw their statistics about the number of resident British citizens from registration data while others draw theirs from census data.

Registration data will exclude anyone not registered (for residence as EU citizens), the accuracy of this measure will depend on the extent to which (a) registration is compulsory and (b) access to services, employment, and welfare rely upon this. In other words, there are likely shortfalls in the numbers of people registered versus the number of British citizens living in a member state before Brexit. In states where this was compulsory and where access to other services is contingent on registration a greater proportion of the British population are likely to be registered (e.g. Germany, The Netherlands). While in those countries where registration was not compulsory (e.g. Spain) and where access to services was not contingent upon this, significant proportions of the population will be unregistered (by some estimates, up to 30%).

Census data may be drawn on in the absence of registration data. This is notable in the case of France where EU citizens have not been required to register since 2002. The limitations on the data are linked to the methodology used in the census. In this case, France operates an annual survey for *communes* [administrative areas] numbering over 10,000 residents, while *communes* smaller than this are surveyed on rotating basis once every five years. Those living in France for 12 months or more are included, as well as those who can demonstrate their intentions to stay for longer than 12 months. The British population of France is highly dispersed. While those who live in large metropolitan centres will be captured in the census data on an annual basis, the methods for data collection for smaller communities mean that the numbers of British citizens living in these areas could be significantly underestimated.

It is also clear that ONS statistics do not include those who have dual nationality or those who live in an EU member state part-time.

The available statistics are being used as a measure for the progress of the implementation of citizens' provisions. But we also need to be aware that these are only estimates that do not provide a very reliable baseline. The result is that there is no accurate baseline from which to think about how many British citizens are at risk of failing to secure their status.

My concern is that given that the numbers could be far greater than the statistics record, with the result that the shortfall between the numbers of British citizens receiving new residence documents and the estimated size of these populations may be far greater than it appears on paper.^[4] The equivalent here are the registrations through the UK's EU settlement scheme (EUSS). While the expectation was that there were 3.2 million EU citizens living in the UK; we know that to date 5.2 million people have applied to the EUSS.

Shortfall in the numbers of applications in constitutive systems

There are two different routes being operated by EU member states and EEA states for British citizens resident by 31 December 2021 to secure their rights to the protections of the Withdrawal Agreement: declaratory and constitutive systems. The conclusion of applications through either route is the issue of a biometric residence cards to attest to their status as resident before the end of the Brexit transition period and access to citizens' rights provisions as laid out in Withdrawal Law. All member states are required to consider late applications where there are reasonable grounds that explain the delay in application. However, no guidance has been issued to for those making decisions about what constitutes reasonable grounds.

In countries operating a declaratory system (Bulgaria, Croatia, Cyprus, Czechia, Estonia, Germany, Greece, Iceland (EEA) Ireland*, Italy, Liechtenstein (EEA), Lithuania, Poland, Portugal, Slovakia, Spain, Switzerland (single market)), British citizens need to apply for a residence card that proves their status.

In countries operating a constitutive system (Austria, Belgium, Denmark, Finland, France, Hungary, Latvia, Luxembourg, Malta, The Netherlands, Norway (EEA) Romania, Slovenia, Sweden), British citizens are required to apply for their status (by deadlines that range from 30 June-31 December 2021), demonstrating their eligibility, with successful applications resulting in the issue of a biometric residence card.

The consequences of not applying by these deadlines are that people will lose their rights to the provisions offered by the Withdrawal Agreement. To secure their residence status they may have to use alternative routes such as applying through domestic immigration controls, which have a far higher bar when it comes to eligibility requirements than is expected of those who lawfully exercised their rights to Freedom of Movement under the provisions of the Withdrawal Agreement. There is a risk that those who do not register will become undocumented.

Four of member states operating a constitutive system—France, Latvia, Luxembourg and Malta—have a 30 June 2021 deadline. The only available statistics about the numbers of applications that have been made were published 28 May 2021 by the Specialised Committee on Citizens' Rights.^[5] These show a worrying shortfall in the number of applicants received in relation to estimated numbers of British citizens resident in these countries.

They also show that a time lag between applications being made and concluded, the latter the point at which people receive the residence cards give them the right to the citizens' rights provisions.

While worrying in every case, the shortfall in France, the member state with the second largest population of British citizens, signals significant cause for concern. The statistics show a shortfall in applications of over 25000, with 50000+ applications still to be processed and completed.

As I stressed previously, it is very difficult to know how many British citizens live in France, and so it is unclear how many people still have to apply. It is also the case that before the new registration system was put into place, when applying

for *Carte de séjours* because of Brexit, some British citizens were finding themselves judged as not lawfully resident under Freedom of Movement Directives.^[6]

The shortfall in applications means that the 30 June deadline currently in place in France, Latvia, Luxembourg and Malta is not generous enough to permit the vast majority of those eligible to apply. Similarly, the deadlines for issuing residence cards (in France, 1 October) appears unrealistic given the volume of applications.

At risk populations of British citizens in the EU

However successful the implementation is, there will be a proportion of people who fall through the gaps and become undocumented in the process. This will have serious implications for their lives that may start to come to light later.^[7]

It is likely to be the most vulnerable and otherwise hard to reach populations that lack the knowledge that (a) they need to register and (b) how to go about this. There will also be those who are not in a position to complete any necessary applications themselves. This might include children in care, who might have to rely on social workers, or carers to secure their status. Whether these intermediaries know that they need to do this, whether they have the documentation and time required to follow through, are all challenges. There will also be those whose personal circumstances (e.g. access to the Internet, transportation) mean that they are not able to apply.

More vulnerable individuals—the homeless, those with mental capacity problems, those with disabilities and long-term ill-health, children in care among them—are less likely to come forwards at this time; they are also more likely to need others to advocate for or secure their rights on their behalf. At present, it is unclear what measures have been put in place to ensure that vulnerable and hard-to-reach populations secure their status on time.

There is also the issue of how people apply – whether these are online systems or not – and whether people have the aptitude or knowledge to use these. Digital exclusion and inequality is most likely to be experienced by those most vulnerable within this population.

The pending deadline in some countries makes the timeframe very short for any targeted communications work aimed at hard-to-reach and vulnerable individuals or to put in place exceptional measures to accommodate the challenges that they might be facing.

There is going to be long tail to citizens' rights. The implementation is only the start of this process. Withdrawal Law will be put to the test in the coming years and decades as people claim and exercise the rights secured through these provisions.

Deterioration of trust in the UK government among British citizens living in the EU

One of the repeated findings from the *BrExpats* research was that the majority of those taking part in the research (British citizens living across the EU) felt that they were out of sight and out of mind of the UK Government.^{[8][9]}

From their point of view, the Government's actions in respect to citizens' rights made clear that they had a very limited understanding of who their citizens living in EU were, the reasons behind their migrations, and consequently the broad range of issues that Brexit brought to the fore for them. This is further exacerbated by the fact that in recent years consular support has been reduced, while embassies have engaged with a more trade-focussed agenda.

Yet, the recent UK Government's recent policy paper 'Global Britain in a Competitive Age: the Integrated Review of Security, Defence, Development and Foreign Policy'^[10] suggested that the UK's citizens living overseas might be harnessed as a source of soft power for Global Britain.

To be clear, among those British citizens living in the EU I have worked with, trust in the UK Government was at an all-time low. To my mind, there is a long way to go to rebuild confidence among the British population living in the EU that the Government will defend and represent their interests and that they will serve as 'soft power' in the way imagined in the integrated review.

Recommendations

More up-to-date statistics about the numbers of British citizens living in EU member states should be requested from EU partners. While the limitations of this data would still stand, more recent statistics will offer a more timely baseline against which to evaluate the progress of implementation.

The Home Office report *Emigration from the UK* (2012)^[11] urgently needs updating to better map the British population living in the EU and beyond. This should be done through consultation with academic advisors and thinktanks who specialise in population statistics, and member of Civil Society and Grassroots Organisations for British citizens living abroad.

Similarly, more up-to-date statistics on the numbers of applications made and concluded in constitutive systems should be made available to further evaluate the progress of implementation as this is time-sensitive.

The UK Government needs to call urgently for countries operating a constitutive system with a 30 June deadline to evaluate the progress of implementation and consider extending the deadlines for (a) applications and (b) issue of residence permits.

They should also call for guidance about 'reasonable grounds' to be produced the EU and member states for distribution to those processing applications.

The UK Government should ask member states operating constitutive systems what communications they have developed to target hard to reach and vulnerable individuals, their carers and support workers. If such communications are not yet planned, they should call for their urgent introduction, including information about special provisions that will be put in place to enable these people to register.

Mechanisms need to be put in place within the EU and UK to monitor and document how citizens' rights provisions are upheld in the long-term.

The UK Government and FCDO need to undertake significant repair work to rebuild trust among British citizens living in EU.

Notes

[1] Brexit Brits Abroad archive and website – <https://brexitbritsabroad.org>

[2] Rebordering Britain and Britons after Brexit (MIGZEN) – <https://migzen.net>

[3] Michaela Benson (2019) The puzzle of how many Brits Abroad there really are. BBC News Website, 12 January 2019 [<https://www.bbc.co.uk/news/uk-46632854>]

[4] Michaela Benson (2021) British Citizens in the EU: the other side of the citizens' rights coin. UK in a Changing Europe, 2 June 2021 [<https://ukandeu.ac.uk/british-citizens-in-the-eu-the-other-side-of-the-citizens-rights-coin/>]

[5] Specialised Committee on Citizens' Rights (2021) Third Joint Report on the Implementation of Residence Rights under Part Two of the Withdrawal Agreement. [<https://www.gov.uk/government/publications/residence-rights-implementation-of-the-withdrawal-agreement-part-2-citizens-rights-third-joint-report-april-2021>]

[6] Michaela Benson (2019) 'Brexit and the classed politics of bordering: the British in France and European belongings', *Sociology* 54(3): 501-517 [<https://doi.org/10.1177/0038038519885300>]

[7] Michaela Benson (2021) 'Brexit's hidden costs for Britons living in the EU', *Current History* 120(824): 118-120. [<https://research.gold.ac.uk/id/eprint/29779/>]

[8] Michaela Benson (2020) Brexit and the British in France. Project report: ES/R000875/1 BrExpats [<https://doi.org/10.25602/GOLD.00028222>]

[9] Karen O'Reilly (2020) Brexit and the British in Spain. Project report: ES/R000875/1 BrExpats [<https://doi.org/10.25602/GOLD.00028223>]

[10] Cabinet Office (2021) Global Britain in a Competitive Age: the Integrated Review of Security, Defence, Development and Foreign Policy [<https://www.gov.uk/government/publications/global-britain-in-a-competitive-age-the-integrated-review-of-security-defence-development-and-foreign-policy>]

[11] Home Office (2012) *Emigration from the UK*
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/116025/horr68-report.pdf]