

# Rethinking citizenship

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## *Migration policy in a post-Brexit era*

### 1. Introduction

The idea of citizenship, as it has developed over the last couple of centuries, is linked closely to nationhood. In the 19<sup>th</sup> and 20<sup>th</sup> centuries, “citizenship” broke loose from its original relationship with “the city” and became embedded instead in the emerging concept of the nation-state.<sup>1</sup> All nations are to some degree artificial constructs. As Hobsbawm wrote: “for the purposes of analysis nationalism comes before nations. Nations do not make states and nationalisms but the other way round.”<sup>2</sup> More pithily, “Getting its history wrong,” said the French historian Ernest Renan, “is part of being a nation”.

Nonetheless, even in our globalised age, nations and nationality remain crucial alongside the rise of global institutions. So as the UK prepares to separate itself from one of the most successful supranational projects of the post-war era with all the changes to immigration policy this entails, now is a good time to consider, and perhaps rethink, the concept of British citizenship – not synonymous with nationality, but closely linked.

What does it mean to be a British citizen? Should the citizenship process be more or less accessible? What are the implications for society as a whole of higher or lower barriers to citizenship? On Brexit Day, whenever it comes, British citizens will have their European citizenship rights removed. What will they lose that day, and what, if anything, will they gain?

More directly, can rethinking and reinvigorating the concept of British citizenship help us to solve some of the current issues thrown up by Brexit? In this paper, based on research funded by Unbound Philanthropy, I offer a few thoughts on the way forward.<sup>i</sup>

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<sup>i</sup> My thanks to Rosie Evans, Sara Cutler, Will Somerville and Swee Leng Harris for comments on the draft paper and to speakers and participants in the migration and citizenship workshop at the Policy Institute on 9 July. Any remaining errors are the responsibility of the author.

## 2. Understanding British citizenship

Despite the UK's long and complex history, British people haven't been citizens of the country for very long. For most of our history, being "subjects of the Crown" sufficed, and "British Citizenship" only entered the stage in 1948, at the beginning of the end of the British Empire. So British citizenship in effect was created 71 years ago, and for more than a third of that time (since 1993 and the Maastricht Treaty), it has shared the stage with the parallel and very different concept of "European citizenship".

The current rules for acquiring British citizenship originate in 1981 – as Yeo points out, at that time no one was thinking in terms of the situation for EU citizens, their family members and free movement rights.<sup>3</sup> British nationality law is "complicated by historical factors and the slow British withdrawal from empire"; and eligibility for citizenship is not widely understood even by immigration lawyers.<sup>4</sup> Prior to 1948 there was a single common law status of "British subject", which applied throughout the British Empire. "Subjecthood" was eventually replaced by three forms of nationality: British citizen; British overseas territories citizen; and British overseas citizen. These different forms of nationality are one of the components of the complexity and confusion in the administration of our immigration system.



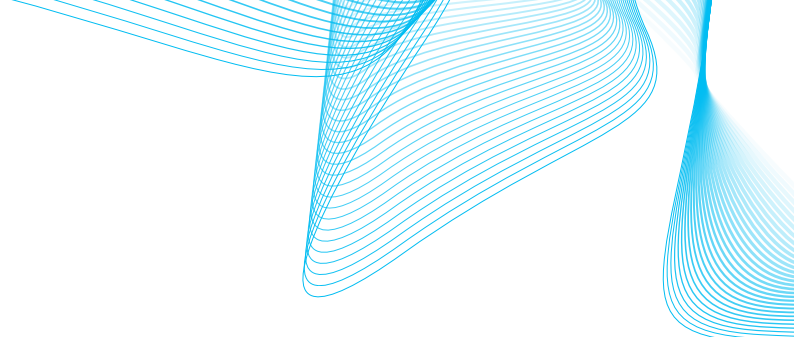
In Northern Ireland, much of the ambiguity, anomalies and potential for friction have been smoothed over by the fact that both the UK and Ireland are full EU members

For much of its recent history, the UK has been a country of emigration rather than immigration – albeit with specific waves of immigration too. Hence the UK's cultural, institutional and political legacy is very different from other Anglosphere countries such as the US, Australia or Canada. These latter countries, explicitly countries of immigration, each in their own way have a much stronger drive towards citizenship as a key vector of integration. As Adrienne Clarkson, former Governor General of Canada and herself a refugee, put it: "becoming a Canadian citizen is not like visiting a buffet table in a restaurant where you pick and choose what you want ... Canada has a set menu, offering, but not limited to, medicare, openness to immigrants, a just legal system."

This imperial legacy has left its imprint in the UK, in terms of specific arrangements with both Ireland and with the Commonwealth, and in terms also of anomalies, and in some cases, injustices, that have resulted. With regard to the complexities of the Common Travel Area between Ireland and the UK, and the specific arrangements for citizenship that apply in Northern Ireland, much of the ambiguity, anomalies and potential for friction have been smoothed over by the fact that both the UK and Ireland are full EU members, with the four freedoms and European citizenship applying to citizens of both states. Moreover, in the Good Friday Agreement, the governments of both the UK and Ireland explicitly recognise "the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both governments and would not be affected by any future change in the status of Northern Ireland." This does not change with Brexit.<sup>5 ii</sup>

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ii However, the principle of individual choice whether to be an Irish citizen, a British citizen or both is currently being tested in the courts in the DeSouza case. See for example: <https://www.prospectmagazine.co.uk/other/emma-de-souza-northern-ireland-citizenship-brexit-irish-british>



But Brexit – assuming it happens, and assuming it means a separation greater than moving to membership of the European Economic Area/European Free Trade Association or an equivalent – will end the free movement of people, and therefore also end the reciprocity between the UK and Ireland of joint EU citizenship and will (re)expose these issues.

How popular is becoming a British citizen? Acquiring citizenship certainly isn't easy: there's a long process to undergo with high fees and the need to navigate complex legislation. In the year to 2019, there were 175,000 applications for British citizenship, 19% more than in the previous year, but below the levels of 10 years ago, when there were almost 200,000 per annum. Applications by EU nationals increased by 26% to 54,000, representing 31% of all citizenship applications. Applications by non-EU nationals rose by 17%, compared with a decline in the previous two years.<sup>6</sup>

Countries with a stronger cultural emphasis on immigration, such as Canada or the US, tend to have a clearer view on the value of citizenship, and their immigration systems are more directed towards becoming citizens. In these contexts, citizenship ceremonies are important as a way of publicly affirming an individual's personal commitment to the new country. The introduction of citizenship ceremonies in the UK has been successful: in 2018, 115,000 people attended such ceremonies, with almost half (46%) attending in London.<sup>7</sup>

The frequent changes to legislation on nationality over the last 70 years have created a very complex landscape, which perhaps only immigration lawyers and other specialists can fully understand. Since 2010, there have been 130 changes to immigration policy, almost three times as many as those implemented by all the previous governments over the last 30 years.<sup>8</sup> The Immigration Rules have quadrupled since 2008, and the rulebook is now more than 1,000 pages long.

More fundamentally, the UK and continental approaches to citizenship have always been very different.<sup>9</sup> In the “Anglo-Saxon” welfare state tradition, Marshall was very influential.<sup>10</sup> In his schema, citizenship rights proceed from the civil to the political to the social – an “evolution” of citizenship over a period of 250 years. Civil citizenship comes first and comprises those rights necessary for individual freedom: freedoms of speech, thought and faith; the right to own property and conclude valid contracts; and the right to justice. Political citizenship comes next and comprises the right to participate in the exercise of political power. Social citizenship adds to these elements by comprising the right to a level of economic welfare and security, and the key institutions are those of the welfare state, particularly education and social services. In Marshall's typology, the progress is historical as well as logical, with civil rights established in the 18<sup>th</sup> century, political rights in the nineteenth century and social citizenship rights in the 20<sup>th</sup> century.

Marshall saw, as did later analysts of comparative welfare states such as Esping-Andersen,<sup>11</sup> that social citizenship, and the operation of the welfare state, itself acts as a driver of social stratification, creating inequalities as well as equalities. Marshall's typology was, however, geographically and culturally specific. It reflected the historical development of citizenship rights – at least as it occurred in Britain. In much of continental Europe, the concept of social citizenship is more closely linked to the

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labour market and social reconciliation. Moreover, the ordering of citizenship rights in Marshall's typology is contingent rather than inherent. Social citizenship has been associated with authoritarian conservatism as well as with democratic progressivism. In Germany, for example, social rights came "early", prior to the development of political rights.<sup>12 13</sup>

Citizenship is linked to state formation, and implies the question of who is to be included and who excluded. The rise of the nation state, the development of citizenship and the expansion of welfare states were closely linked historically. The nation state became both the driver and the guarantor of citizenship.

The concept of citizenship implies borders and barriers, and with the development and growth of welfare states the importance of belonging to communities became more important, as the benefits of inclusion and the costs of exclusion became greater. Some commentators go further, arguing that it is impossible to imagine citizenship outside of the national context without emptying the term of all meaning. Raymond Aron wrote: "There are no such animals as 'European citizens'",<sup>14</sup> while Dahrendorf argued that the nation state, whatever its drawbacks, is the only guarantee of the rule of law, and hence generalised the ancient idea of citizenship.<sup>15</sup> Hannah Arendt called citizenship "the right to have rights"<sup>16</sup>, and as Baubock points out, this leads to a paradox in terms of universal human rights: the individual can only be protected once a state had recognised them as a citizen of that state.<sup>17</sup> Hence, citizenship is key not just to the ability of an individual to exercise rights at a national level, but also with regard to universal human rights. For Baubock, citizenship is about "equal membership in a self-governing political community", and he argues that this has four components: formal legal status linking individuals to a state or another established polity (including the EU); a bundle of legal and social rights; a set of responsibilities; and a collective identity that can be shared across race, class, gender, religion, ethnic origin and so on.

### **3. What does European citizenship actually mean?**

These very different conceptions of social citizenship adhere to the very different types of welfare states found in the EU. There is not one "European social model" but many models – all of which have been overlain since the Maastricht Treaty of 1993 with the concept of "European citizenship".<sup>18</sup> The EU, of course, is a legal order, not a state – albeit with some state-like characteristics. So what does and can "European citizenship" mean in practice?

Some would deny that citizenship can inhere in anything other than a nation state, and the historical development of citizenship gives some support to that. What, if anything, does being a citizen of the EU add to the set of rights an individual possesses as a citizen of a member state? European citizenship was formally created by Article 8 of the Maastricht Treaty in November 1993, although some elements can be identified in earlier treaties. Five specific rights of European citizenship are included, additional to citizenship rights at member-state level:

- The right to free movement.

- The right to participate in municipal and European elections while resident in another member state.
- The right to diplomatic and consular protection of another member state while travelling outside the EU.
- The right to petition the European Parliament.
- The right to apply to the EU Ombudsman.

Of these, freedom of movement has been the most significant.

The inclusion of voting rights at municipal and European level while resident in another member state, might raise the question of why not voting rights at national level also? Typically, voting rights at national level are seen by most countries as the marker of citizenship, as opposed to long-term residence or denizenship. Baubock, writing in 2008, states that “only four countries (Chile, Malawi, New Zealand and Uruguay) offer all long-term residents voting rights in national elections, and even in these cases various restrictions apply.” It could be argued that the right to vote and citizenship are not intrinsically linked, ie having the franchise could be seen as a political right associated with resident taxpaying status, not necessarily with citizenship. But generally it seems reasonable to link national voting rights to citizenship, as long as there is a clear route by which resident taxpaying foreign citizens can access citizenship.

EU citizenship therefore clearly adds some significant rights to the package offered by UK citizenship, even when these additions (particularly freedom of movement) are seen negatively by some UK citizens, eg in terms of these rights being exercised by other (non-UK) EU nationals. All UK citizens will therefore lose something if and when Brexit removes European citizenship rights from UK citizens. For some UK citizens this loss will be seen as a price worth paying, while for others it is a significant and unwelcome change in their economic and social rights. Both groups might agree that the change, whether viewed positively or negatively, impacts significantly on the individual’s sense of identity and belonging.

On Brexit Day, UK citizens will lose EU citizenship rights unless they have dual nationality (including of course Irish nationality). But, interestingly, “post-Brexit almost everyone born in Northern Ireland will be either an EU citizen or entitled to be one.”<sup>19</sup> Although some have raised the question of post-Brexit British citizens retaining some form of EU citizenship, the “weight of opinion [maintains] that it is not possible for UK citizens to keep their EU citizenship after the UK leaves the EU.”<sup>20</sup>

What about attitudes? How has the two-tier nature of UK and EU citizenship impacted how we feel about our UK citizenship? For many younger people, EU citizenship is seen as valuable – for study, work or travel abroad, for example – and not just as a means to an end, but as an end in itself. For many young (and older) people, there is no contradiction between being British and being European. Others have very different views. Eurobarometer evidence in March 2016 found that UK respondents were among the least likely to know that they are citizens of the EU and their own country at the same time.<sup>21</sup> But between March and November 2016 (of course a time period

encompassing the EU referendum) the sense of European citizenship gained ground in 16 member states, but most strikingly in the UK – up 14 percentage points. An Opinium Survey in June 2017 found almost 60% of respondents said they wanted to retain EU citizenship.<sup>iii</sup> Among 18-34-year-olds, this rose to 71%. The removal of EU citizenship post-Brexit will therefore place more focus and perhaps more pressure on British citizenship.

## 4. Current challenges

### (i) Settled status

For the estimated 3.5 million to 4 million EU nationals in the UK, as well as the 1.5 million or so UK citizens living and working in the EU, common European citizenship has meant that for the last quarter-century, there has been no need to think much about citizenship issues as anything other than a personal choice about which nationality to have. But post-Brexit, UK citizens will no longer be EU citizens, and EU nationals will not be able to exercise European citizenship rights in the UK in the same way as pre-Brexit.

Some EU nationals may wish to become British citizens – which may in some cases mean renouncing another nationality/citizenship.

On 11 December 2017, the then Prime Minister Theresa May wrote to EU citizens in the UK as follows:

“When we leave the European Union, you will have your rights written into UK law. This will be done through the Withdrawal Agreement and Implementation Bill which we will bring forward after we have completed negotiations on the Withdrawal Agreement itself. Your rights will then be enforced by UK courts. Where appropriate, our courts will pay due regard to relevant ECJ [European Court of Justice] case law, and we have also agreed that for a period of eight years – where existing case law is not clear – our courts will be able to choose to ask the ECJ for an interpretation prior to reaching their own decision. So as we take back control of our laws, you can be confident not only that your rights will be protected in our courts, but that there will be a consistent interpretation of these rights in the UK and in the European Union.”

In a later policy paper, “Citizens’ Rights – EU citizens in the UK and UK nationals in the EU” published on 6 December 2018 and updated on 28 March 2019, the Department for Exiting the European Union stated:

“The Government is clear that the reciprocal deal with the EU, as set out in the Withdrawal Agreement, is the only way to protect the rights of both UK nationals in the EU and EU citizens in the UK. The Withdrawal Agreement gives these citizens certainty that they can go on living their lives *broadly as now*. However, it is

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<sup>iii</sup> However, in October 2017, in response to the same question, the proportion wanting to retain fell to 47%.



our duty as a responsible government to prepare for all eventualities, including ‘no deal’.” [Emphasis added.]

The paper goes on to say: “[T]he UK Government wants to reassure EU citizens and their family members living in the UK that they are welcome to stay in the UK in the unlikely event of a ‘no deal’ scenario.” However, the paper also makes clear that in a no-deal scenario, ie without a transition period: “this guarantee would only apply to EU citizens who are resident in the UK by exit day”. (Under the Withdrawal Agreement, EU arrivals who are resident in the UK before 31st December 2020 can apply under the scheme.)



The situation of EU citizens in the UK would be further complicated if there is a ‘no deal’ exit of the UK from the European Union

What does “broadly as now” mean? Smismans argues that the Withdrawal Agreement “does not guarantee all current rights ... At best, EU citizens will receive an inferior status to what they hold now, particularly with reduced rights of family reunion for relationships that do not exist prior to the end of the transition period, and it will be a less secure status.”<sup>22</sup> Smismans points to the role of secondary legislation with regard to “settled status” and the fact that the ECJ role will fall away after eight years, as risks which may undermine the status of EU citizens in the UK in the longer term. The UK has promised to set up an Independent Monitoring Agency to oversee the application of EU citizens’ rights after Brexit. But Smismans argues: “there is little guarantee that the Independent Authority ... will lead to effective and efficient supervision as is today guaranteed supranationally by the European Commission and the Court of Justice”.

The situation of EU citizens in the UK would be further complicated if there is a no-deal exit of the UK from the European Union. Even in a no-deal scenario, the EU Withdrawal Act 2018 means that freedom of movement will continue until the UK adopts measures to change (not expected until 2021 or later). EU citizens will continue to be encouraged to apply for settled status (see below). But as Smismans points out, rights which EU citizens hold through coordination arrangements between the UK and the EU are not covered. These include “recognition of pension entitlements they have built up in the UK and would carry with them if they returned to their country of origin: and access to health provision that depends on coordination and payments between the NHS and health services in the EU”.

The UK government’s response to the situation that EU nationals will find themselves in post-Brexit is the EU Settlement Scheme and the (new) concept of “settled status”. The scheme has been fully open since 30 March 2019 and the deadline for applying is 30 June 2021 or 31 December 2020 if the UK leaves the EU without a deal. Although a fee was initially proposed, this has now been dropped. The process is relatively simple, and can be accessed via an app on Android (but not Apple) phones. It is, however, an application process, and not just a declaratory scheme – ie applicants can be refused. Applicants can be granted either settled status or pre-settled status. According to the Home Office, by 31 August 2019, 1,339,600 applications had been received under the scheme, of which 1,151,000 had been “concluded”, comprising 62% granted settled status, and 37% pre-settled status.<sup>23</sup> There is, however, concern about delays in concluding some applications, and instances where people who are eligible for settled status have been granted pre-settled status only. There was a large rise in applications between July and August 2019, from 131,300 to 299,000, and the backlog of unconcluded applications more than doubled, from just under 90,000 at the end of July

to over 188,000 at the end of August. In addition, the proportion of applicants granted pre-settled rather than settled status has been rising.<sup>24</sup>

Registering 3.6 million or more EU nationals in a timeframe of 27 months or less is of course a mammoth bureaucratic and logistical task. Rutter and Ballinger state that this undertaking, one of the largest tasks ever undertaken by the Home Office, will cost around £500-600 million.<sup>25</sup> More specifically, they estimate that perhaps 30% of EU citizens in the UK are at risk of being left out for reasons related both to individual circumstance and the way the system operates, including the fact that there are still misunderstandings about the mandatory nature of the scheme; stay-at-home parents and children in care may find it difficult to provide evidence of residency; HMRC data is to be cross-linked to the Home Office, but the pilots show cases where they don't match; and so on.

It is not clear what status and what rights EU nationals will have at the deadline if they do not have settled or pre-settled status. At worst, "this group of EU citizens may find themselves in the same position as those affected by the recent Windrush scandal: destitute, barred from working, at risk of exploitation and unable to access basic services such as the NHS. A large and visible population of undocumented migrants also reduces public trust in the government's ability to manage immigration."<sup>26</sup> In practice, there is a link between documentation (or lack of it) and protection of people's rights. The "Windrush group" had the legal right to be in the country but lacked the documents to prove it.


The House of Commons Home Affairs Committee shared these concerns about the risks of the scheme, reporting in May 2019 that they had:

"... serious concerns that the detailed design of the scheme means that many EU citizens currently resident in the UK are at risk of being left out. Technical issues have blighted the application process, with applicants struggling to navigate the online system without assistance from the Home Office. Many others will fail to apply successfully, either because they are unaware that the scheme applies to them or because they are unable adequately to evidence their entitlement to status. There remain too many gaps and ambiguities in the government's guidance – including what will happen to individuals who do not apply before the deadline and how it will ensure that citizens are not disadvantaged in the case of a no-deal Brexit – and we remain doubtful as to the Home Office's ability to handle the number and complexity of applications it will receive over the lifetime of the Scheme."

Echoing the recommendations of Gardner and Rahman, the Committee also repeated its support for the declaratory principle, rather than an application process:

"We believe that the correct status for an EU citizen who has been legally resident in the UK for more than five years is settled status, regardless of whether they have complete documentary evidence to prove this fact. We therefore repeat our recommendation that the Government amend the Immigration and Social Security Co-ordination (EU Withdrawal) Bill so as to provide for the automatic granting of settled or pre-settled status in the UK to anyone who would, under current Government proposals, be entitled to that status under the EU Settlement Scheme





on the day on which the UK ceases to be a member of the European Union. The Settlement Scheme would function as currently proposed by the Government for people who arrive in the UK after this date.”<sup>27</sup>



If only 5% of EU nationals don't apply for settled status or are refused, this will mean an additional 175,000 people in the UK who are insecure or have no status

Much of the current debate around the EU Settlement Scheme focuses on its logistics, operation and potential risks. But the nature of the scheme is significant in the wider debate about citizenship and what sort of country a post-Brexit UK will be. The settlement scheme is essentially a reasonable and fairly liberal attempt at a quick fix to one of the many serious difficulties presented by Brexit. Not unreasonably, it seeks to provide a straightforward, practical solution which affords EU nationals both respect and a degree of security, as well as minimising negative consequences. But of course, however humane and “generous” it is, and regardless of any improvements made, such as those proposed by the Home Affairs Committee, no scheme can provide an exact equivalent to the EU citizenship rights that EU nationals currently exercise. In exactly the same way, the future rights of UK nationals in the EU will never be equivalent to exercising EU citizenship rights which UK nationals currently possess – backed up of course by the role of the ECJ.

What does this imply about how the UK views the importance of British citizenship? Is there an expectation or wish that EU nationals currently living here become British citizens? In some cases, this would mean giving up another nationality. What about future migrants from the EU – will they be strictly confined to specific categories such as tourists or students or temporary workers? The government’s Immigration White Paper foresees a future UK migration system in which EU and non-EU immigrants are treated identically, and where the work-related aspects of the proposed system imply a shift towards temporary rather than permanent migration. If this is to be the future, does this mean that the 3.5 million current EU nationals are in effect categorised as a “legacy issue” (albeit a large one) which deserves – and will receive – special treatment? For this group, but not future EU migrants, the benefits of EU citizenship and freedom of movement will be preserved as a kind of residual set of “pseudo-rights”. But this will not be a template for the future, and will effectively become the latest anomalous category within the UK’s Immigration Rules. For example, if the UK-EU Withdrawal Agreement as presently drafted is ratified, the application of citizens’ rights would extend not only to EU nationals now living in the UK, but also to their future children.

Or is the vision one of all or almost all EU nationals being fast-tracked from settled status to citizenship? Interestingly, during the Conservative Party leadership campaign, Michael Gove said that if he became Prime Minister, he would favour an offer of British citizenship (without cost) to all EU nationals resident in the UK prior to the EU referendum in June 2016. In response to an enquiry, Sajid Javid, the then Home Secretary, disagreed, saying: “citizenship and naturalisation is and always has been a matter for individual member states and distinct from the issue of free movement rights or our membership of the EU. As such, we are not proposing to provide differential treatment to EEA and Swiss citizens who wish to apply for citizenship over others from outside the EEA.”

At present, those with settled status are able to leave the UK for up to five years and retain their settled status. But to apply for citizenship, an individual must have lived in the UK for at least five years before their application, and not have spent more than 450

days outside the UK. If someone with settled status wants to gain citizenship, they will need to meet the citizenship requirements; they may not be aware that settled status is not necessarily a route to citizenship.

Were a future UK government to offer or even promote British citizenship to all EU nationals currently resident, whether sequentially or in parallel with the settlement scheme, this would mean a substantial one-off rise in the number of UK citizens at a rate very unlikely to be matched in the future.

On the other end of the spectrum, if only 5% of EU nationals don't apply for settled status or are refused, this will mean an additional 175,000 people in the UK who are insecure or have no status. They will have gone from being EU citizens exercising full citizenship rights in a member state, with court protection, to being undocumented individuals and illegal workers.

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**120,000**  
Estimated number of  
undocumented children

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**10 years**  
To attain indefinite leave  
to remain

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**£8,269**  
Cost in application fees  
for indefinite leave to  
remain

#### **(ii) Youth citizenship**

There are an estimated 120,000 undocumented children in the UK, including 65,000 who were born here.<sup>28</sup> Many have lived all their lives in the UK, not realising there was an issue with their status until they try to work or to access further or higher education. An undocumented person cannot work, access mainstream benefits, go to college or university, open a bank account, or hold a driving licence. There is little hard evidence on legal outcomes for these children, but the highly fragmented data that are available suggest that there is a large gap between estimated numbers and numbers who either regularise or leave.

The number regularising is likely to be in the low thousands at most. Usually this means they are only granted temporary leave to remain, starting on a long road to permanence. Barriers include the complexity of the law and policy; lack of awareness and understanding; lack of free, quality legal representation; and very high application fees, with only very limited fee waivers.

If leave is granted, then it is usually just for two and a half years. The route to indefinite leave to remain (ILR) takes 10 years, requiring five applications and £8,269 in fees along the way.<sup>29</sup> During this time, young people are cut off from university, and cannot claim benefits, social housing or homelessness assistance. More generally, they are not given the permanence needed to plan for futures and contribute to society.

Once again, what does this state of affairs imply about the value given by wider society to citizenship? What does it suggest about the importance given to ensuring that young people, who are resident here, are quickly put on a path to citizenship, with the responsibilities as well as benefits that that implies?

Coram Children's Legal Centre recommended:

- A shorter route to permanent status and lower application fees.
- Exempting children in care from fees for citizenship as well as for immigration applications/appeals; and extending the exemption to care leavers and those supported by the local authority.

### (iii) Costs and confusion

Although some parts of the immigration system in the UK work well – for example, processing of visas – overall the system is immensely confusing, complex and costly. As Somerville and Murray state: “the UK’s highly centralised system (an outlier relative to other countries) means that while the Home Office has flexibility there is also a lack of accountability, redress, and procedural safeguards ... The Withdrawal Act ... will concentrate power in the Executive and therefore the Home Office even further.”<sup>30</sup>

These authors argue for an increase in parliamentary oversight, a simplification of the immigration rules, and improved scrutiny of delegated secondary legislation, as well as a simple online citizenship application and low fee to all those, both EU and non-EU, who have been in the UK legally for five years.

Two separate but linked issues can be identified. First, what is the role of the Home Office and how is it being incentivised? The cost of some visas has gone up almost 500% in the past 10 years,<sup>31</sup> and the Institute for Government (IfG) points out that the Home Office makes the equivalent of 800% profit on some applications, subsidising costs elsewhere in the system. Costs are particularly high for naturalisation and settlement: “A family of five coming to the UK for five years will pay over £21,000” – more than double the cost in Australia, and 30 times as much as in Canada.

Part of the reason why visa costs are so high is that the Home Office is under pressure to generate its own income – estimated at £2 billion a year by a minister at a recent Westminster Hall debate. But in addition to this, the “hostile environment” approach of the recent past has meant that the Home Office has been tasked with delivering a reduction in the number of migrants. This approach has driven decision-making and process and system design, and affects the way the Home Office thinks about citizenship: because it is not responsible for “down-stream” integration outcomes, there is a lack of joined-up thinking in government when it comes to the impact of immigration policies on community integration and cohesion. The IfG comments that:

“It could be that the purpose of such high costs is to put applicants off, as a deliberate Home Office policy to minimise the number who seek to become UK citizens and make it easiest for wealthy people...Settlement and Naturalisation are an important tool for integration. By placing barriers to citizenship for many who cannot afford it, the Government is simply converting a funding question for the Home Office into a policy issue for the integration teams in the MHCLG”.

Secondly, the accountability of the system is weak. Lack of parliamentary and independent oversight, the complexity of the system and the extensive use of secondary legislation has meant that consistency, rigour and transparency are lacking. While the Migration Advisory Committee (MAC) provides valuable and independent input, its focus and remit is solely on the economics and finance of migration, meaning other perspectives are neglected.

### (iv) Political context and policy failures

The politics of immigration continues to be contentious, both in the UK and in many other countries, and as Somerville and Murray point out, has played a major role both in the EU referendum and in recent general elections. Moreover, both the Labour and Conservative parties contain competing views in terms of their desired type of system.

500%

increase in cost of some  
visas in last 10 years

800%

Profit made on some  
applications

£21,000

Cost for family of 5  
coming to the UK

Looked at positively, this means that there is scope for building cross-party consensus both in terms of the system as a whole and around specific reform initiatives.

There is much less direct political discussion around citizenship, and until recently, citizenship aspects played a minor role in the debates about immigration. However, there is good reason to believe this is now changing. In part, interest in citizenship has increased for pragmatic and practical reasons, in response to the complexities and costs of the migration system. Citizenship also provides an important and under-used link from immigration to integration and identity issues. Furthermore, it is the argument of this paper that, as the implications of Brexit – beyond the immediate issues of the future trade and regulatory relationship between the UK and the EU – become better understood, more attention will be given to the benefits and nature of British citizenship, and the losses – both practical and also personal – from losing EU citizenship.

In addition, recent and potential policy and delivery failures – including the treatment of the Windrush generation, the situation for undocumented young people and the change in status of EU nationals – also focus attention on the complex and subtle intertwining of notions of belonging, identity and fairness. In this space, citizenship should be playing a key role.

An increased focus on citizenship thereby offers scope for further developing cross-party consensus and helping to move future migration policy onto a more long-term and politically sustainable basis.

## **A positive way forward: citizenship as a practical solution**

The above analysis suggests that new ways of thinking about and promoting citizenship can play an important role in migration policy.

Four specific questions can be identified:


### **1. Should a UK citizenship offer be made to EU citizens, and if so, of what kind?**

Rutter and Ballinger argue that the government “should make a citizenship offer to EU citizens who arrive in the UK before 31 December 2020. If they have five years’ continuous residency and meet the other requirements for British citizenship – good character, English language and knowledge of life in the UK – they should be offered citizenship at a reduced cost of £300 and without the need to have 12 months’ Permanent Residence or Settled Status.” Should a similar offer be made to other long-term residents who are currently without citizenship?

### **2. Birthright citizenship?**

As Baubock points out, the principle of territorial birth (*jus soli*) is the dominant principle in a much smaller number of countries, such as the US, Canada and Australia, compared with citizenship through descent (*jus sanguinis*). Nevertheless, Somerville and Murray argue that:

“A straightforward but bold reform option is a return to birthright citizenship (which was previously ended in 1981). Such a move would signal welcome and provide a clear status to those born in the UK. The focus on citizenship and children is also



one that should win support across the political spectrum. Most of the public and political elites believe it currently exists. But, in fact, hundreds of thousands of people have been born and lived their early lives in the UK, but do not necessarily have a right to live here ... Aside from the obvious benefits to the individuals, we know acquisition of citizenship correlates to better life outcomes as well as simplifying the immigration system and saving money for the taxpayer.”

Note also that both now and after Brexit, following the Irish constitution and the Good Friday Agreement, “almost all persons born in Northern Ireland are or are entitled to be Irish citizens...[after Brexit] Northern Ireland would be in the curious position of being a jurisdiction outside of an EU member state where almost everyone who is born here will be (or be entitled to be) an EU citizen.”<sup>32</sup>

### **3. Reducing costs and confusion.**

The IfG has recommended a simplification bill, taking account of the current Law Commission review of immigration rules. This should simplify the thousands of pages of immigration rules that have become unwieldy and sometimes unworkable. The currently weak scrutiny of immigration legislation should be strengthened, so that any significant change to the immigration system can only be implemented via primary legislation. Somerville and Murray make similar points.

### **4. What are the political options and the scope for consensus?**

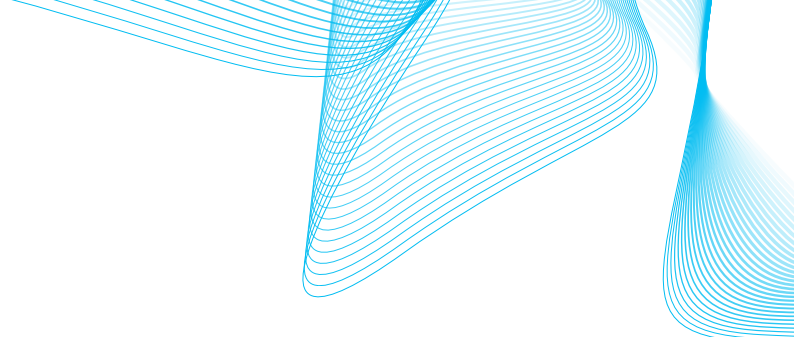
While migration policy has frequently been a headline-grabbing and highly party-political issue, at the same time there has also been a range of views within each of the major parties, and some examples of cross-party consensus and joint working on specific aspects. Does a greater emphasis on citizenship aspects hold out the possibility of broadening those areas of consensus that already exist and open up space for further debate?

Each of these questions, and possible ways forward, are discussed further in blogs on the Policy Institute website by acknowledged experts in the field.

Citizenship has not generally been a key part of the migration debate. But we are now at a pivotal moment for raising its profile, both as an important way to understand where we are and who we are, and as part of a pragmatic and politically deliverable solution to some of the current difficulties we face as we prepare to leave the EU.

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