

Who may be eligible to be granted beneficiary status under the Withdrawal Agreement?

The Withdrawal Agreement protects those EU citizens residing in the United Kingdom, and UK nationals residing in one of the 27 EU Member States at the end of the transition period, where such residence is in accordance with EU law on free movement. Essentially, nationals from the United Kingdom meet those requirements if:

- they hold a paid or non-paid job; or
- have enough resources; or
- are members of someone else's family meeting those requirements;

It is possible to move between these categories (for example, leave their job to start studying). In order to keep your rights, the meeting of, at least, the conditions concerning one of the abovementioned categories is sufficient.

The Withdrawal Agreement also protects the family members that are granted rights under EU law who live in the same host state as the UK national, and also protects those family members who do not yet live in the same host state as the Union citizen or the UK national, to join them in the future. Children will be protected by the Withdrawal Agreement, wherever they are born before or after the United Kingdom's withdrawal, or whether they are born inside or outside the host state where the EU citizen or the UK national resides. The only exception foreseen concerns children born after the United Kingdom's withdrawal and for which a parent not covered by the Withdrawal Agreement has sole custody under the applicable family law.

I have moved to Malta in January 2021, am I eligible to be granted beneficiary status under the Withdrawal Agreement?

The Withdrawal Agreement does not apply if you only started living in Malta after 31 December 2020. In such instances, you must apply for a residence permit for a certain residence purpose in line with national law and policies.

I am beneficiary status holder under the Withdrawal Agreement, but I have lost my card, what shall I do?

If you have lost your residence card, you must report such loss to the police. The police declaration must be signed by the police. Once you are in possession of a signed police declaration you must submit a request via email, submitting a copy of your passport bio-page or full copy of the passport if your passport has changed since your previous applicant, and the police declaration, on brexit.identita@gov.mt in order for a new residence document to be issued.

I am beneficiary status holder under the Withdrawal Agreement but my personal information has changed since I have been issued with a residence document, what shall I do?

If you want a new residence document because changes have been made to your personal information after you received your residence document, you must submit documentation of the changes to your personal data.

For example, if you have changed your name, you must submit documentation of your name change.

You must submit such request via email on brexit.identita@gov.mt.

I am a beneficiary status holder under the Withdrawal Agreement and reside in Malta, how long may I reside outside of Malta before losing my right of beneficiary status in Malta?

The right of residence provided by the Withdrawal Agreement is not affected by temporary absences which do not exceed six months in a year, nor longer absences for the compliance of military obligations, or an absence of twelve consecutive months maximum for important reasons such as pregnancy or childbirth, serious illness, studying or professional training, or deployment to another Member State or third-country for professional reasons.

Once obtained, the right of permanent residence shall be lost by the absence for a period exceeding five consecutive years only.

I am a beneficiary status holder under the Withdrawal Agreement and my purpose of stay has changed since I have been issued with the residence document, what shall I do?

If the purpose of your stay has changed, and you meet any of the conditions for other grounds for residence, you do not lose your grounds for residence. You are covered by the Withdrawal Agreement as long as you meet the conditions for at least one of the categories. You can therefore change your status between, for example, employee, student, self-employed person or person with sufficient funds for self-support.

I am a beneficiary status holder under the Withdrawal Agreement and I want to move to another Member State, may I benefit from the rights of free movement in the EU after the end of the transitional period?

Your new residence status after the withdrawal agreement only applies in Malta. After 1 January 2021, EU rules on free movement will no longer apply to UK nationals. However, it is possible for you to travel freely in the Schengen area for a maximum of 90 days within a period of 180 days. You can do this because British citizens are visa-exempt in Schengen and because you have a right of residence in Malta. After 1 January 2021, it is recommended that you bring documentation of the continued right of residence in Malta when entering and leaving Malta.

If you wish to take up residence in another EU country after 1 January 2021, you must contact the authorities of that member state to be guided on their national laws and policies.

I am a UK national who has been residing in Malta prior to the 31st of December 2020, but have not applied for a residence document which would grant me beneficiary status under the Withdrawal Agreement, may I apply for such status now?

In light of the fact that Malta has adopted the constitutive scheme as set out in Article 18(1) of the Withdrawal Agreement, an application has to be submitted with Identità by the applicant, and beneficiary status is not granted automatically. The 30th of June 2021 marked the deadline for the submission of applications for a residence document under the provisions of the Withdrawal Agreement and relative Maltese legislation (Subsidiary Legislation 217.25).

You are still able to submit an application for a new residence document based on the Withdrawal Agreement even though the deadline has passed, if there is clear evidence and reasonable grounds for the failure to respect the said deadline. These will be assessed by Identità on an individual basis and dependent upon the circumstances which led to the late submission.

There are many different reasons that can be taken into consideration as reasonable grounds for failure to respect the said deadline. The assessment which will be carried out by Identità will always be a full assessment of your personal situation including circumstances and reasons for not meeting the deadline. It is essential that when you submit an application after the deadline date you include documentation for the reason that you have not met the application deadline.

If it is Identità's assessment that you have had reasonable reasons for not meeting the deadline for submitting the application, we will process your application.

I have submitted a late application to be granted beneficiary status under the Withdrawal Agreement, but Identità has stated that I do not have reasonable grounds to submit a late application. What is the next step?

If Identità deemed that there are no reasonable reasons for you not to have met the deadline for submitting your application, the consequence will be that your rights based on the Withdrawal Agreement have lapsed and cannot be reinstated.

This means that your application for residence based on the Withdrawal Agreement will not be processed and that your right to reside in Malta accordingly has lapsed.

If you wish to remain residing in Malta you may only do so in line with national law and policies.

I have submitted a late application to be granted beneficiary status under the Withdrawal Agreement, but Identità has stated that while I do have reasonable grounds to submit a late application, I do not satisfy the criteria to be granted beneficiary status. What is the next step?

If Identità deemed that you do not satisfy the criteria to be granted beneficiary status under the Withdrawal Agreement, the consequence will be that your rights based on the Withdrawal Agreement have lapsed and cannot be reinstated.

This means that your application for residence based on the Withdrawal Agreement will not be processed and that your right to reside in Malta accordingly has lapsed.

If you wish to remain residing in Malta you may only do so in line with national law and policies.

If Identità considers that I do not have sufficient grounds to submit a late application, or consider that I do not satisfy the criteria to be issued with a residence document under the Withdrawal Agreement, what is the next step?

A decision of Identità which either does not accede to your request to submit a late application or does not accede to your request to be granted beneficiary status in line with the Withdrawal Agreement, will be issued in writing. The decision will contain the reason as to why the Agency did not accede to such request.

The appeal must be presented to the Immigration Appeals Board within three (3) working days from the date of decision of Identità.

Any communication should be in English and addressed to the Immigration Appeals Board as follows:

The Secretary,
Immigration Appeals Board,
9/10; 13/14, City Gate,
Ordinance Street,
Valletta.

The Immigration Appeals Board is an entity autonomous from Identità and operates in accordance with the provisions of the applicable subsidiary legislation under the Immigration Act (Cap. 217 of the Laws of Malta). For guidance on your rights during your appeal you must contact the Immigration Appeals Board directly.

If you do not wish to appeal the decision of the Agency, and you wish to remain residing in Malta, you may only do so in line with national law and policies.

If you are not eligible to remain residing in Malta in line with national law and policies you will have to leave Malta within one month from the decision taken by Identità.

I am beneficiary status holder under the Withdrawal Agreement and would like my family members to move to Malta following the end of the transition period. Are they eligible to be considered as my family members and to be issued with a residence document granting them beneficiary status under the Withdrawal Agreement?

The Withdrawal Agreement protects family members who have taken up legal residence in Malta together with a beneficiary status holder before the end of the transition period on 31 December 2020, but also protects those family members who have not taken residence in Malta, as a family member of a beneficiary holder, before the end of the transition period 31 December 2020.

Family members who are covered by the Withdrawal Agreement are also permitted to move to Malta and live with the beneficiary status holder already residing in Malta at any time after the end of the transition period on 31 December 2020.

In order for your family members to be able to move and reside with you in Malta as a family member under the Withdrawal Agreement after the end of the transition period, certain conditions must be met.

1. The family members which may join you include your immediate family members, including your spouse, durable partner, any children under the age of twenty-one (21).

Your children over the age of twenty-one (21), and your parents, may also be granted facilitation to join you in Malta provided it can be proven to the satisfaction of Identità that they are financially or physically dependent on you.

If you would like an extended family member than as specified above to join you in Malta this is not possible. Other family members may be considered only if they have been legally residing in Malta before the end of the transition period on the 31st of December 2021. The application would only be considered by Identità if it can be proven to the satisfaction of the Agency that your family member is physically dependent on you and only you may provide such family member with the care they need, or they are fully financially dependent on you.

If you have a family member who falls within the extended family member category who wishes to join you in Malta following the end of the transition period, they may submit an application for residence in Malta in line with national law and policies.

2. In order for Identità to be in a position to consider an application for your family member to be granted beneficiary status under the Withdrawal Agreement, such family relation must have been established prior to the end of the transition period and continues to be in effect at the time of application.

This means that if you have been married to your spouse since before 31st of December 2020, and are still married at the date of application, than your spouse may be granted beneficiary status under the withdrawal agreement.

If your family relation has only been established after 31 December 2020, the future family members to the UK citizen will not be covered by the Withdrawal Agreement. If your partner would not have been eligible for a residence document on the basis of family member under the Withdrawal Agreement because it cannot be ascertained that your relationship was durable prior to the end of the transition period, than in these instances where the family relation has been established after the end of the transition period on 31 December 2020, your family member will have to apply for a residence permit in line with national law and policies.

The Withdrawal Agreement does however protect children who are born to, or legally adopted by, UK citizens after the end of the transition period on 31 December 2020, and they will therefore be eligible to be issued a residence document as a beneficiary status holder under the Withdrawal Agreement. Your child, at application stage, must be under the age of twenty-one (21) and are financially supported by the UK citizen. For the Agency to process such request you must prove that you have either sole or joint custody of the child.

3. Upon application you must be able to document the relationship with sufficient evidence, which may include the marriage certificate for your spouse, the birth certificate for your children, and sufficient evidence confirming the durability of the relationship with your partner.

The Agency may request that any documents submitted be apostilled or legalised depending on the country in which the marriage or birth took place.

I am a beneficiary status holder under the Withdrawal Agreement which was granted to me because I was a family member of a UK national, however I am no longer a family member of such UK national, am I still eligible to retain such status?

Even if you are no longer a family member to a UK national, you may retain your residence rights in certain scenarios.

These scenarios include the following instances:

You have been living in The Netherlands for five (5) years or more as a family member of a UK national, even prior to the end of the transition period, and may therefore be eligible for permanent residence.

The UK national has left Malta or passed away, but:

- you have lived with the UK national who has beneficiary status as a family member in Malta for at least 1 year, or
- you are a child of the UK national who has beneficiary status and are studying in Malta,
- or you are the custodial parent of a child of the UK citizen who has beneficiary status that is studying in Malta,

and may therefore retain your right of residence in Malta under the Withdrawal Agreement.

Your marriage or relationship with the UK national who has beneficiary status has ended but:

- your marriage lasted at least three (3) years and you lived together in Malta for at least one (1) year, or
- you have received custody of the children or
- you have access rights and the Court ordered that you must visit your children in Malta, or
- your marriage with the UK national who has beneficiary status has ended due to hardship, such as instances of domestic violence.

I am a beneficiary status holder under the Withdrawal Agreement and have been residing in Malta for over five (5) years, am I eligible for permanent resident?

If you have been legally residing in Malta for more than five (5) years, including also the period before the end of the transition period, you may be entitled to permanent residence when you have had actual and real residence in Malta for at least five (5) consecutive years.

Such permanent residence may be granted on condition that you have met, throughout the whole period, the conditions for at least one ground for residence under the EU regulations on free movement.

Upon application you must submit sufficient evidence that you resided in Malta for at least six (6) months in a twelve (12) month period throughout the last five (5) years. A maximum period of twelve (12) months of consecutive stay outside of Malta does not hinder your right to be granted permanent residence, provided that the absence from Malta is for important reasons, including health and study, or stays abroad for a longer duration due to mandatory military conscription or you being stationed abroad.

I am a beneficiary status holder under the Withdrawal Agreement who has permanent residence in Malta, and I wish to move to another country, will my permanent status be withdrawn?

Your residence document as a permanent residence status holder will remain valid if you return to Malta within five (5) years after leaving Malta.

I am a beneficiary status holder under the Withdrawal Agreement who has permanent residence, how can I lose my permanent residence rights?

If you have been granted permanent residence and reside outside of Malta for more than five (5) years, you will lose your permanent residence rights.

I am a beneficiary status holder under the Withdrawal Agreement who has permanent residence, are my family members also entitled to such permanent residence?

Your family members do not automatically have the right to permanent residence based on the Withdrawal Agreement just because you have been granted permanent residence. Your family members would need to satisfy the conditions of permanent residence in their own right.