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# REPORT ON POLITICAL PARTICIPATION OF MOBILE EU CITIZENS: UNITED KINGDOM

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GLOBALCIT studies political participation in the context of the project Fostering Awareness, Inclusion and Recognition of EU mobile citizens' Political Rights (FAIR EU) and as a part of the EU-CITIZEN network.

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# Report on Political Participation of Mobile EU Citizens

## United Kingdom

*Reuven (Ruvi) Ziegler\**

### Abstract:

In the United Kingdom, non-citizen residents from EU Member States have the right to vote and stand as candidates in local and European Parliament elections. Non-resident citizens have the right to vote in national and European Parliament elections, providing that they have been registered in a UK constituency within the previous 15 years. Active registration is required by both non-citizen residents and non-resident citizens on an annual basis. Once registered, non-resident citizens may vote by post, by proxy, or in person if they are in the UK at the time of the election. The practical obstacles for political participation are the differentiated regime of enfranchisement of non-citizen residents, the non-automatic registration system with its annual renewal requirement, insufficient targeting through informational campaigns, and the risk of inadvertent disenfranchisement through the move to Individual Electoral Registration (IER). On the other hand, participation is facilitated by the provision of online registration and the extension of the Parliamentary election timetable from 17 days to 25 days. The recommendations to improve participation are to enable same-day registration, improving targeted information to under-represented groups, introducing e-voting, and the introduction of an overseas constituency for non-resident citizens.

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## 1. Introduction \*

Non-resident citizens have the right to vote and stand as candidates in national elections and European Parliament elections. This right is conditional upon having been registered in a UK constituency within the last 15 years. Registration and renewal are non-automatic, and non-resident citizens are required to renew their registration every year. This may be done online. To register, it is only necessary to provide a declaration. In the case of individuals who were never registered in the constituency in which they were resident on the basis of age, it is necessary to provide a birth certificate. Once registered, like other voters, overseas electors can vote by post or proxy, or in person at their allotted polling station if they happen to be present in the UK at the time of the election.

Non-citizen residents from EU Member States all have the right to vote and stand as candidates in local and European Parliament elections. Citizens of the Republic of Ireland (RoI), on the basis of domestic legislation, and citizens of Cyprus and Malta, on the basis of their status as Commonwealth countries, also have the right to vote and stand as candidates in national elections. Registration is not automatic and must be renewed annually. Online registration is possible in England, Wales, and Scotland, but not in Northern Ireland.

Table 1. Conditions for electoral rights of non-resident citizens and non-citizen residents in the United Kingdom (GLOBALCIT CER 2017)

Type of voter	Election type	Voting Right	Candidacy Right	Automatic registration	Remote voting
Non-resident citizens	National Legislative	YES <sup>1</sup>	YES <sup>2</sup>	NO	YES
Non-resident citizens	European Parliament	YES <sup>3</sup>	YES <sup>4</sup>	NO	YES
Non-citizen residents	Local Legislative	YES <sup>5</sup>	YES <sup>6</sup>	NO	N.A.
Non-citizen residents	Local Mayoral	YES <sup>7</sup>	YES <sup>8</sup>	NO	N.A.
Non-citizen residents	European Parliament	YES <sup>9</sup>	YES <sup>10</sup>	NO	N.A.

\* Unfortunately, the relevant public bodies Electoral Commission and the EU representation to the UK have not responded to the questionnaire, so the information in this report relies on publicly available sources as well as engagement with civil society organisations, as below.

<sup>1</sup> Must have been registered (or resident if they were minors) in a UK constituency within the preceding 15 years. Otherwise, generally disenfranchised.

<sup>2</sup> Must have been registered (or resident if they were minors) in a UK constituency within the preceding 15 years. Otherwise, generally disenfranchised.

<sup>3</sup> Must have been registered (or resident if they were minors) in a UK constituency within the preceding 15 years. Otherwise, generally disenfranchised.

<sup>4</sup> Must have been registered (or resident if they were minors) in a UK constituency within the preceding 15 years. Otherwise, generally disenfranchised.

<sup>5</sup> Only for EU citizens residing in the municipality where the election is held, and Commonwealth citizens who have or are not required to have Indefinite Leave to Remain in the UK.

<sup>6</sup> Only for EU citizens residing in the municipality where the election is held, and Commonwealth citizens who have or are not required to have Indefinite Leave to Remain in the UK.

<sup>7</sup> Only for EU citizens residing in the municipality where the election is held, and Commonwealth citizens who have or are not required to have Indefinite Leave to Remain in the UK.

<sup>8</sup> Only for EU citizens residing in the municipality where the election is held, and Commonwealth citizens who have or are not required to have Indefinite Leave to Remain in the UK.

<sup>9</sup> Only for EU citizens residing in the municipality where the election is held, and Commonwealth citizens who have or do not leave to have Indefinite Leave to Remain in the UK.

<sup>10</sup> Only for EU citizens residing in the municipality where the election is held, and Commonwealth citizens who have or do not leave to have Indefinite Leave to Remain in the UK.

## 1.1 Demographic characteristics of mobile EU citizens in the country: numbers, regional concentration, gender and age composition, employment status and main sectors of work.

The overall UK population on 1 January 2018 was 65,808,573.<sup>11</sup> Given that the UK does not have a national identification system, and that EU27 citizens (see below) are not (yet) required to register upon arrival or for residence purposes,<sup>12</sup> the numbers of EU27 citizens in the UK cited below are estimates based on samples, taken from the Annual Population Survey in December 2017 detailing the top 60 non-UK nationalities.<sup>13</sup>

Table 2. Estimate population of EU mobile citizens in the UK

Member State (MS)	UK Residents	MS	UK Residents
Poland	c. 1021k	Bulgaria	c. 86k
Romania	c. 411k	Slovakia	c. 82k
RoI	c. 350k	Greece	c. 70k
Italy	c. 297k	Czech Republic	c. 49k
Portugal	c. 235k	Sweden	c. 43k
Lithuania	c. 199k	Malta	c. 30k
Spain	c. 182k	Belgium	c. 25k
France	c. 181k	Cyprus	c. 19k
Germany	c. 154k	Austria	c. 18k
Latvia	c. 117k	Finland	c. 16k
Hungary	c. 98k		
Netherlands	c. 97k		

There is no available estimate for the remaining five EU MS (Estonia, Slovenia, Croatia, Luxembourg).

Many EU24 citizens (see below) will have acquired British citizenship so these figures are over-inclusive in respect of their exclusion from UK parliamentary elections (below). The Annual Population Survey provides<sup>14</sup> a regional breakdown based on EU27 total, EU14,<sup>15</sup> EU8,<sup>16</sup> EU2,<sup>17</sup> and 'EU other'.<sup>18</sup>

<sup>11</sup> See: [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=demo\\_pjan&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=demo_pjan&lang=en).

<sup>12</sup> Cf the 'settled status' scheme which was rolled out by the UK government in Autumn 2018 as a (voluntary) pilot. If the UK leaves the EU on 29 March 2019, EU26 citizens (see definition below) will be *required* to apply for 'settled status' by 30 June 2021 (six months after the conclusion of the envisaged implementation/transition period). Home office, *EU Settlement Scheme: Statement of Intent* (21 June 2018); available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/718237/EU\\_Settlement\\_Scheme\\_SOI\\_June\\_2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/718237/EU_Settlement_Scheme_SOI_June_2018.pdf).

<sup>13</sup> See: <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/ukpopulationbycountryofbirthandnationality/2017>, table 2.3. The table also contains a male/female breakdown.

<sup>14</sup> Id Table 2.2.

<sup>15</sup> 'EU14': Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, Netherlands, Portugal, Republic of Ireland, Spain and Sweden.

<sup>16</sup> 'EU8': Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia.

<sup>17</sup> 'EU2': Bulgaria and Romania.

<sup>18</sup> 'EU other': Cyprus, Malta, Croatia.

The following data is taken from an Oxford-based Migration Observatory report<sup>19</sup> based on the Migration Observatory's analysis of the January 2018 Office of National Statistics Labour Force Survey.<sup>20</sup> That report refers to EU26 citizens, given the unique immigration status of Irish citizens (below). The demographic data is presented by age groups, regional distribution, professions, and type of employment contract. There was no gender-related dataset available.

Table 3. Duration of residence in the UK, non-Irish EU nationals, 2017

Duration of residence in the UK	London	Rest of UK	All
Less than 10 years	608,000	1,292,000	1,900,000
10-19 years	276,000	660,000	936,000
20-29 years	66,000	72,000	138,000
30-39 years	26,000	28,000	54,000
40+ years	23,000	69,000	92,000
Born in the UK	92,000	207,000	299,000
<b>Total</b>	<b>1,099,000</b>	<b>2,338,000</b>	<b>3,438,000</b>

Source: Migration Observatory analysis of LFS, 2017. Figures may not sum to total due to rounding.

Table 4. Age of non-Irish EU nationals, 2017

	London	Rest of UK	Total
Under 18	196,000	531,000	727,000
Age 18-34	427,000	911,000	1,338,000
Age 35-64	439,000	823,000	1,262,000
Age 65-74	20,000	35,000	54,000
Age 75+	17,000	39,000	56,000
<b>Total</b>	<b>1,099,000</b>	<b>2,339,000</b>	<b>3,438,000</b>

Source: Migration Observatory analysis of LFS, 2017. Figures may not sum to total due to rounding.

<sup>19</sup>Migration Observatory, *Unsettled Status* (12 April 2018); available at: <https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-which-eu-citizens-are-at-risk-of-failing-to-secure-their-rights-after-brexit/>.

<sup>20</sup> Available at: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/uklabourmarket/january2018>.

Table 5. Regional breakdown of non-Irish EU nationals, 2017

Region of the UK	Number	Percent
London	1,099,000	32%
South East	412,000	12%
East of England	330,000	10%
North West	251,000	7%
South West	198,000	6%
Yorkshire and Humberside	212,000	6%
Scotland	202,000	6%
Northern Ireland	88,000	3%
West Midlands	269,000	8%
East Midlands	256,000	7%
North East	56,000	2%
Wales	63,000	2%
Total	3,438,000	100%

Source: Migration Observatory analysis of LFS, 2017. Figures may not sum to total due to rounding.

Table 6. Selected breakdown of non-Irish EU nationals with temporary contracts, agency workers and self-employed in routine or elementary jobs, 2017

	London	East Midlands	Rest of UK	Total
Temporary contract	26,000	18,000	91,000	135,000
Agency worker	35,000	31,000	113,000	179,000
Self-employed in routine or elementary job	67,000	69,000		136,000

Source: Migration Observatory analysis of LFS.

Table 7. Selected contract types and employers excluding full time students non-Irish EU citizens aged 18+, 2017

Type of work	Number
Agency worker (employee or self-employed), of which	179,000
<i>Manufacturing</i>	48,000
<i>Retail + wholesale</i>	33,000
<i>Transport + storage</i>	27,000
Zero-hour contract	25,000
Temporary contract, of which	135,000
<i>Manufacturing</i>	28,000
Working fewer than 15 hours per week	55,000
Employee working for small employer (1-10 employees)	266,000
Self-employed, routine + elementary jobs, of which	136,000
<i>Transport and storage (e.g. cab and van drivers)</i>	33,000
<i>Admin and support (e.g. cleaning offices)</i>	28,000
<i>Construction</i>	30,000

Source: Migration Observatory analysis of LFS. Note: small employer figures do not include responses for 'don't know but under 25'. Hours worked refer to total usual hours, excluding overtime. Examples provided in parentheses represent the largest occupational categories within the industry. Low-skilled occupations include elementary and routine occupations as classified by ONS.



Table 8. Economically inactive non-Irish EU nationals aged 18+, 2017

Reason for inactivity	Whole UK		London	Whole UK	
	Men	Women	All	All	Inactive 5+ years
Looking after family	-	139,000	36,000	144,000	78,000
Long term sick or disabled	16,000	19,000	12,000	35,000	24,000
Retired	31,000	69,000	31,000	100,000	88,000
Other reasons	16,000	33,000	18,000	49,000	23,000
Total	68,000	260,000	97,000	328,000	213,000

Source: Migration Observatory analysis of LFS. Figures may not sum to total due to rounding. Excludes people still enrolled in education. Figures on who have been inactive for 5 or more years include those who have never worked.

## 1.2. Brief summary of electoral rights (voting and candidacy rights) of non-citizen residents (EU and TCN) and non-resident citizens (residing in EU and in third countries).

### *Non-resident citizens*

This report makes references to three categories of EU citizens.

- *EU27 citizens*: citizens of EU Member States (MS) other than the UK.
- *EU26 citizens*: citizens of EU MS other than the UK and the RoI.
- *EU24 citizens*: citizens of EU MS other than Malta and Cyprus (who are also Commonwealth (CW) citizens<sup>21</sup>), the UK, and the RoI.

If they are ordinarily resident in the UK, pursuant to Sections 1 and 2 of the Representation of the People Act 1983,<sup>22</sup> respectively, citizens of Malta, Cyprus, and the RoI (like other ‘qualifying’ CW citizens) are enfranchised in all UK elections: parliamentary (general) elections, European parliamentary elections, and local government elections (the UK equivalent of the term ‘municipal elections’ in EU law). The franchise for referendums is regulated separately for each referendum.

*ROI citizens*, pursuant to section 2 of the Ireland Act 1949,<sup>23</sup> do not require leave to remain in the UK pursuant to section 1(3) of the Immigration Act 1971.<sup>24</sup> The UK

<sup>21</sup> The term ‘commonwealth citizens’ refers to the following: 1) *Commonwealth countries*: Antigua and Barbuda, Australia, The Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei, Cameroon, Canada, Cyprus, Dominica, Fiji Islands, The Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Mozambique, Namibia, Nauru, New Zealand, Nigeria, Pakistan, Papua New Guinea, Rwanda, St Kitts & Nevis, St Lucia, St Vincent & The Grenadines, Samoa, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, Swaziland, Tonga, Trinidad & Tobago, Tuvalu, Uganda, United Republic of Tanzania, Vanuatu, Zambia, Zimbabwe. 2) *British Overseas Territories*: Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn Island, St Helena and dependencies (Ascension Island and Tristan da Cunha), South Georgia and the South Sandwich Islands, Sovereign base areas on Cyprus, Turks and Caicos Islands. 3) *British Crown Dependencies*: Isle of Man, The Channel Islands (including Jersey, Guernsey, Sark, Alderney, Herm and the other inhabited Channel Islands).

<sup>22</sup> c. 2; available at: <http://www.legislation.gov.uk/ukpga/1983/2/contents>.

<sup>23</sup> c.41; available at: <http://www.legislation.gov.uk/ukpga/Geo6/12-13-14/41/section/2/enacted>.

<sup>24</sup> c.77; available at: <https://www.legislation.gov.uk/ukpga/1971/77/section/1>.

government posits that this immigration status will not be affected if the UK leaves the EU on 29 March 2019.<sup>25</sup>

*Maltese and Cypriots citizens* and, indeed, Third Country Nationals (TCNs) who are CW citizens must be ‘qualifying’ in order to vote, namely either ‘(a) not a person who requires leave’ under the Immigration Act 1971 (above) ‘to enter or remain in the UK’ or ‘(b) such a person who for the time being has (or is, by virtue of any enactment, to be treated as having) any description of such leave’. Given that *qua* EU citizens they are deemed to meet the Immigration Act 1971’s leave requirements, the consequences are that Maltese and Cypriots citizens have *wider electoral access than EU24 citizens*.

RoI, Maltese, and Cypriot citizens are enfranchised in *European parliamentary elections* given that they would be ‘entitled to vote as an elector at a parliamentary election in a parliamentary constituency wholly or partly comprised in the electoral region’.<sup>26</sup> As a rather peculiar feature of the franchise, *other CW citizens* (not Maltese and Cypriots) are also eligible to vote for the UK’s constituencies of the European Parliament, notwithstanding the fact that they are *not* citizens of the Union, but TCNs. RoI, Maltese, and Cyprus citizens are local government electors pursuant to section 2(1)(c) of the Representation of the People Act 1983 (above).

*EU24 citizens are excluded from parliamentary (general) elections*. They are enfranchised in European Parliamentary Elections pursuant to Regulation 3 of the European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001<sup>27</sup> and in local government elections pursuant to the above-mentioned section 2(1)(c) of the Representation of the People Act 1983. Separate regulations govern local elections in England and Wales,<sup>28</sup> Scotland (where voting eligibility age is 16),<sup>29</sup> and Northern Ireland.<sup>30</sup>

TCNs who are neither EU27 citizens nor qualifying CW citizens *cannot vote in any elections*: parliamentary, local government, or European parliamentary.

<sup>25</sup> *EU Settlement Scheme* (n2 above) [2.6] (‘Irish citizens enjoy a right of residence in the UK that is not reliant on the UK’s membership of the EU...’).

<sup>26</sup> s. 8(2) of the European Parliamentary Elections Act 2002 c. 24; available at: <https://www.legislation.gov.uk/ukpga/2002/24/section/8>.

<sup>27</sup> Available at: <http://www.legislation.gov.uk/ukdsi/2001/0110286545/regulation/3>. Regulation 1(2) stipulates that: “‘relevant citizen of the Union’ means such a citizen who is not a Commonwealth citizen or citizen of the Republic of Ireland.”

<sup>28</sup> The Representation of the People (England and Wales) Regulations 2001; available at: <https://www.legislation.gov.uk/uksi/2001/341/contents/made>. England has no devolved administration. There are 60 Assembly Members (AMs) of the National Assembly for Wales. To vote in the National Assembly for Wales election one must: be registered to vote; be 18 or over on the day of the election; be resident at an address in Wales; not be legally excluded from voting. AMs are elected using the Additional Member system. One votes once for one’s constituency AM and once for an AM to represent the wider region.

<sup>29</sup> The Representation of the People (Scotland) Regulations 2001; available at: <https://www.legislation.gov.uk/uksi/2001/497/contents/made>. There are 129 Members of the Scottish Parliament (MSPs). To vote in the Scottish Parliament elections one must: be registered to vote; be 16 or over on the day of the election; be resident at an address in Scotland; not be legally excluded from voting. MSPs are elected using the Additional Member system. One vote once for one’s constituency MSP and once for an MSP to represent the wider region.

<sup>30</sup> The Representation of the People (Northern Ireland) Regulations 2008; available at: <https://www.legislation.gov.uk/uksi/2008/1741/contents/made>. There are 108 Members of the Legislative Assembly (MLAs) in the Northern Ireland Assembly. To vote in elections to the Northern Ireland Assembly one must: be registered to vote; be 18 or over on the day of the election; be resident at an address in Northern Ireland; not be legally excluded from voting. MLAs are elected by the Single Transferable Vote system. One ranks the candidates in one’s order of preference and the top six in one’s constituency are elected.

*Non-resident citizens*

Pursuant to section 1 of the Representation of the People Act 1985,<sup>31</sup> British citizens are eligible to be registered as ‘overseas voters’ if they satisfy one of two conditions within 15 years of the date of the registration application: (1) they were previously registered as a (resident) voter in the UK; or (2) they were only prevented from registering as a (resident) voter by reason of their age, and a parent or guardian of theirs was registered at the address in respect of which the application is made. *No distinction is drawn between UK citizens residing elsewhere in the EU and UK citizens residing outside the EU.*

A British citizen living abroad who is registered as an overseas elector for the purposes of *general and European Parliamentary elections*. Pursuant to section 2 of the Representation of the people Act 1983 (above), overseas electors are not eligible to vote in *local government elections* in the UK.

**(General) legal incapacity to vote**

Pursuant to Section 3 of the Representation of the People Act 1983 (above) most prisoners<sup>32</sup> are disenfranchised for the duration of their imprisonment. In *Hirst (No. 2) v the UK*,<sup>33</sup> the European Court of Human Rights (ECtHR) held that UK legislation violated Article 3 of Protocol 1 of the European Convention on Human Rights.<sup>34</sup>

Disenfranchisement applies in *all electoral processes* governed by the Representation of the People Act 1983 (above). Hence, it affects electoral rights of incarcerated EU27 citizens in European Parliamentary and local government elections, and electoral rights of incarcerated Irish, Maltese, and Cypriot citizens in all elections. Euractiv’s Freedom of Information request revealed that 4,024 EU27 citizens are incarcerated in England and Wales.<sup>35</sup>

**(General) legal incapacity to stand for election**

Pursuant to Section 1 of the Representation of the People Act 1981 (‘Disqualification of certain offenders for membership of the House of Commons’),<sup>36</sup> disqualification follows a sentence of imprisonment that is longer than one year. Therefore, perhaps ironically, it is legally possible for someone to be sentenced to less than a year’s imprisonment and be consequently disqualified from *voting* in an election but not from *standing* therein.

Disenfranchisement applies in *all electoral processes* governed by the Representation of the People Act 1983. Hence, it affects, *inter alia*, of incarcerated EU27 citizens, electoral rights including the right to stand as candidates.

<sup>31</sup> c. 50; available at: <https://www.legislation.gov.uk/ukpga/1985/50>.

<sup>32</sup> Those incarcerated for contempt of court, prisoners on remand, un-convicted prisoners, and civil prisoners can vote (if they are on the electoral register).

<sup>33</sup> App no 74025/01 *Hirst v UK* (no 2) (Grand Chamber, ECtHR, 6 October 2005); available at: <http://www.bailii.org/eu/cases/ECHR/2005/681.html>.

<sup>34</sup> Paris, 20 March 1952; available at: [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf) (stipulating that ‘[t]he High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature’).

<sup>35</sup> Benjamin Fox, ‘Brexiters cry foul over EU prisoner figures’ (Euractiv, 11 April 2018); available at: <https://www.euractiv.com/section/uk-europe/news/brexiters-cry-foul-over-eu-prisoner-figures/>.

<sup>36</sup> c.34; available at: <https://www.legislation.gov.uk/ukpga/1981/34/section/1>.

Some electors may be entitled to be registered to vote in more than one local government election. This includes students who live at different addresses during university term time; people required to work away from their normal home address and who have a second residence for that purpose; and some people who own and occupy a second home. Voters who are registered at two addresses are entitled to vote in local government elections at each of those addresses, *provided they are not in the same local government area*. They must be registered to vote in both areas. The local Electoral Registration Offices (EROs) check each application and inform an applicant if they can register in both areas.

Consequently, EU27 citizens that are, for instance, students in UK institutions can register to vote at their place of study irrespective of whether they retain a registered address in their home member state. Like UK citizens, they may also be long-term residents in the UK and study in a locality other than their parents' residence.

## Registers

Section 9 of the Representation of the People Act 1983 (above) stipulates that '(1) [e]ach registration officer shall maintain... (b) a register of local government electors for the local government areas or parts of local government areas included in the area for which he acts'. The register includes the elector's name, address, and electoral number.

Given the divergent franchises, EROs are required to keep two registers: a *parliamentary register* and a *local government register*.<sup>37</sup> There is also a *Gibraltar register* for European parliamentary elections purposes (see section 2.1 below).

## 2. Non-national EU citizens' franchise in European Parliamentary and local elections

Generally, registration issues arising for TCNs who are qualifying CW citizens *are not dissimilar* to those arising for EU27 citizens, save for the fact that (as noted above) EU27 citizens are not required to register their presence with the police (unlike non-EU CW citizens).<sup>38</sup> A July 2014 Electoral Commission research indicated that, electoral registration for CW citizens is lower than for UK citizens but higher than for EU27 citizens.<sup>39</sup>

While the Office of National Statistics holds data on '[t]he number of people who on 1 December 2017 were registered to vote in local government and parliamentary elections in the UK',<sup>40</sup> it does not hold constituency registration data by *citizenship*; consequently, it does not hold data on number of EU27 citizens registered to vote in each constituency or cumulatively.

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<sup>37</sup> The latest (December 2017) information re the two registers, per constituency: <https://www.ons.gov.uk/peoplepopulationandcommunity/elections/electoralregistration/datasets/electoralstatisticcsforuk>.

<sup>38</sup> See: <https://www.gov.uk/register-with-the-police>.

<sup>39</sup> The Electoral Commission, *The Quality of the 2014 Electoral Registers in Great Britain* (July 2014); available at: [http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0005/169889/Completeness-and-accuracy-of-the-2014-electoral-registers-in-Great-Britain.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0005/169889/Completeness-and-accuracy-of-the-2014-electoral-registers-in-Great-Britain.pdf).

<sup>40</sup> Office of National Statistics (2017); available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/elections/electoralregistration/bulletins/electoralstatisticcsforuk/2017>.

## 2.1. Overview of relevant administrative regulations

### *EP Elections*

Regulation 3 ('Relevant citizens of the Union as European Parliamentary electors') of the European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001<sup>41</sup> states that:

'(1) A person is entitled to vote as an elector at a European Parliamentary election in an electoral region if on the date of the poll he (a) is registered in the region in the register of relevant citizens of the Union entitled to vote at European Parliamentary elections (maintained under regulation 5(2) below); (b) is not subject to any legal incapacity to vote (age apart); (c) is a relevant citizen of the Union; and (d) is of voting age'.

'(2) A person is not entitled to vote as an elector (a) more than once in the same electoral region at any European Parliamentary election or (b) in more than one electoral region at a European Parliamentary general election'.

Regulation 4 ('Entitlement of relevant citizen of the Union to be registered as European Parliamentary elector') states that:

'A person is entitled to be registered in the register of relevant citizens of the Union entitled to vote at European Parliamentary elections (maintained under regulation 5(2) below) for part of an electoral region if on the relevant date he (a) is resident in that part of the region; (b) is not subject to any legal incapacity to vote (age apart); (c) is a relevant citizen of the Union; and (d) is of voting age; and the registration officer has received in respect of him an application and declaration' (as per below)

For the purposes of the European parliamentary elections, the UK is divided into 12 electoral regions; between 3 and 10 MEPs represent each region.<sup>42</sup> EU27 citizens are registered to vote in a local authority and will be issued a ballot for the region in which that local authority is located. Following the judgment in *Matthews v UK*,<sup>43</sup> Gibraltar residents on the Gibraltar register vote in the South West Region.<sup>44</sup>

### *Local Elections*

Section 2 (Local government electors) of the Representation of People Act 1983 (above) states:

'(1) A person is entitled to vote as an elector at a local government election in any electoral area if on the date of the poll he (a) is registered in the register of local government electors for that area; (b) is not subject to any legal incapacity to vote

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<sup>41</sup> n27 above.

<sup>42</sup> In the 2014 European parliamentary elections, the nine English regions elected 59 MEPs (with the West Midlands gaining an extra seat following the entry into force of the Lisbon Treaty in 2011), Scotland elected six MEPs, and Wales four MEPs. In Northern Ireland, three MEPs were elected according to the Single transferable vote.

<sup>43</sup> App no 24833/94 *Matthews v UK* (ECtHR, 18 February 1999).

<sup>44</sup> s.14 of the European Parliament (Representation) Act 2003 c.7; available at: <https://www.legislation.gov.uk/ukpga/2003/7/contents>.

(age apart); (c) is a Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the Union; and (d) is of voting age’.

‘(2) A person is not entitled to vote as an elector (a) more than once in the same electoral area at any local government election; or (b) in more than one electoral area at an ordinary election for a local government area which is not a single electoral area’.

Section 4 (‘Entitlement to be registered as parliamentary or local government elector’) of the above act states that: ‘A person is entitled to be registered in the register of local government electors for any electoral area if on the relevant date he (a) is resident in that area; (b) is not subject to any legal incapacity to vote (age apart); (c) is a qualifying Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the Union; and (d) is of voting age’.

Local government elections include *Shire districts* (some areas in England, such as Reading, have unitary local authorities whereas others, such as Oxfordshire, have a two-tier structure which includes *country and district councils*), *London boroughs*, *metropolitan districts*, *Isles of Scilly*, and *the City of London*.

*Regional assemblies* of the devolved administrations are also considered local government elections for eligibility purposes.

## 2.2. Voter registration

Registration is *neither automatic nor automatically renewed*. Rather, it must be renewed annually. **Online registration** (alongside paper registration) is available in Great Britain (not in Northern Ireland) on the UK government website in English<sup>45</sup> and Welsh.<sup>46</sup>

**Individual Electoral Registration (IER):** on 10 June 2014, England and Wales moved to IER;<sup>47</sup> Scotland followed suit on 19 September 2014, the day after the referendum on Scottish independence. Northern Ireland has had individual electoral registration since 2002.<sup>48</sup> Before IER, one member of a household completed an electoral registration form on behalf of all members of the household, and the primary way in which the registers were kept up to date was via an annual canvass: from July to December each year, registration officers would initiate a drive to ensure that those entitled to vote in elections were registered. Under IER, each eligible elector needs to register to vote individually, and the canvass is a mere inquiry as to who resides in the household. A returned canvass form gives the registration officer that information and is not *per se* an application to register any of the reported residents. Each must individually apply to register by returning an invitation to register form to the registration officer.

When applying to register, electors need to provide identifying information, including their date of birth and National Insurance number, and applications are verified by EROs before voters are added to the register.

<sup>45</sup> See: <https://www.gov.uk/register-to-vote>.

<sup>46</sup> See: <https://www.gov.uk/cofrestru-i-bleidleisio>.

<sup>47</sup> Pursuant to the Electoral Registration and Administration Act 2013 c. 6; available at:

<http://www.legislation.gov.uk/ukpga/2013/6/contents/enacted>.

<sup>48</sup> See: <http://www.eoni.org.uk/>.

When citizens of the Union reside in an EU MS, they can choose whether to vote in their MS of residence *or* in their MS of citizenship.<sup>49</sup> EU27 citizens resident in the UK wishing to vote in the European parliamentary elections in the UK need to complete a **European Parliament Voter Registration Form**, which contains a declaration that the elector will vote in European parliamentary elections in the UK *only*.<sup>50</sup> If an EU27 citizen is registered to vote, their local council should send them the form automatically. A 2014 House of Commons report<sup>51</sup> highlighted challenges arising from confusion regarding the need for filling out the form prior to the 2014 European parliamentary elections, and consequent disenfranchisement of EU27 citizens.

**Registration deadlines:** Most residents still register between September and November, when local councils send registration forms to all homes (as above). However, registration can also be actuated at one's initiative throughout the year. Section 5 of the Electoral Registration and Administration Act 2013 authorises EROs to 'require [a] person to make an application for registration by a specified date'.<sup>52</sup> Those not on the relevant electoral register can register *up to midnight 12 working days before the relevant Poll*.<sup>53</sup> For example, to vote in the local elections in England on 2 May 2019, electors will have to register to vote by 12 April 2019.

**Duplicate submissions:** The online registration system currently allows submission of an application to register even if one is already registered to vote (given the circumstances in which that would be permissible, above). However, given that there is no direct link between the online registration service and the electoral registers (which are each held separately on local databases using a range of different management software systems) the different systems cannot currently communicate directly with each other, and it is therefore not possible to automatically detect and prevent these duplicate applications.

Moreover, **no UK-wide electoral register exists**. Instead, 380 separate electoral registers are compiled and maintained by EROs in Great Britain, and one register for Northern Ireland is compiled and maintained by its Chief Electoral Officer. *The Electoral Commission does not keep copies*.

Authoritative statistics detailing the number of EU27 citizens registered to vote are not available *due to the absence of a general national electoral register*. In its July 2014 report, the Electoral Commission noted that students and under 35s; people living in the private rented sector; certain Black and Minority Ethnic groups; British citizens living abroad; CW and EU27 citizens; and those classified as social grade DE (the 'top' grade being A) are least likely to be registered to vote. At the time of the above report, *estimated*

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<sup>49</sup> Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, OJ L 329, 30 December 1993; Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31993L0109>.

<sup>50</sup> Pursuant to regulation 6 of the European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001 (n27 above). Regulation 10 specifies that, to remain registered in the UK, a declaration has to be remade every 12 months.

<sup>51</sup> House of Commons, Political and Constitutional Reform, *Fourth Report: Voter Engagement in the UK* (10 November 2014); available at: <https://www.parliament.uk/voter-engagement-in-the-uk>.

<sup>52</sup> c.6; available at: <http://www.legislation.gov.uk/ukpga/2013/6/section/5/enacted>.

<sup>53</sup> The election timetable for the 2 May 2019 local government elections in England and Wales is available at: [https://www.electoralcommission.org.uk/\\_data/assets/word\\_doc/0016/215125/Election-timetable-LGEW-scheduled-elctions.doc](https://www.electoralcommission.org.uk/_data/assets/word_doc/0016/215125/Election-timetable-LGEW-scheduled-elctions.doc).

registration rates stood at 53.2% for EU27 citizens compared with 86.5% for UK citizens.<sup>54</sup> According to ONS data, 1,656,149 EU27 citizens were on the electoral register prior to the 2014 European parliamentary elections.<sup>55</sup>

**Methods of voting:** once registered, electors can choose one of three methods of voting (no *breakdown by nationality is available* for the below).

Voting at a polling station (polls are usually open between 0700-2200): before each election, registered voters receive a poll card by post which states their polling station. Polling stations are often at churches, community centres, and schools.

Voting by post: a registered elector must contact their ERO to request a postal ballot instead of the above-mentioned poll card. The postal vote application deadline differs from the registration deadline and is later than the electoral registration date (to enable the ERO to check whether an applicant is registered). For the 3 May 2018 local government elections, electors could apply to vote by post by 18 April 2018. According to the Electoral Commission's post 2017 general election report,<sup>56</sup> more than 8,412,000 electors (just under 18% of the total electorate for that electoral cycle) chose to receive a postal vote.

Voting by proxy: a registered elector must contact their ERO to request a proxy ballot instead of the above-mentioned poll card. The proxy vote application deadline also differs from the registration deadline. For the 3 May 2018 local government elections, electors were able to apply to vote by proxy by 25 April 2018. The proxy voter needs to be eligible to vote in the relevant poll;<sup>57</sup> they can visit a polling station or apply for a postal vote.

### 2.3. Information during the election campaign

Before the June 2017 General Election, the Electoral Commission ran a campaign to increase awareness, including the need to be registered to vote by the deadline. Its post-election report notes that the campaign strategy had four strands:<sup>58</sup>

- 'Using advertising with a tried-and-tested record of success.
- Securing high-profile social media partnerships with *Facebook, Instagram, Snapchat* and *Nextdoor*.
- Generating media coverage around key milestones.
- Supporting partner organisations - including UK and local government, charities and NGOs - by co-ordinating activities and providing resources for them to use on their own channels'.

The report suggests that, while the Electoral Commission promoted voter registration *in general*, it did not proactively seek to inform *EU27 citizens* about their (selective)

<sup>54</sup> The Electoral Commission, *The Quality of the 2014 Electoral Registers in Great Britain* (July 2014); available at: [http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0005/169889/Completeness-and-accuracy-of-the-2014-electoral-registers-in-Great-Britain.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0005/169889/Completeness-and-accuracy-of-the-2014-electoral-registers-in-Great-Britain.pdf).

<sup>55</sup> See Samia Badani, written evidence, House of Commons Political and Constitutional Reform Committee; Available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/political-and-constitutional-reform-committee/voter-engagement-in-the-uk/written/11064.html>.

<sup>56</sup> The Electoral Commission, *Electoral Registration at the June 2017 UK General Elections* (July 2017); available at: [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0003/232761/Electoral-registration-report-July-2017.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0003/232761/Electoral-registration-report-July-2017.pdf).

<sup>57</sup> s.3 of the Electoral Registration and Administration Act 2013 (n47 above).

<sup>58</sup> n56 above at [1.7]. See also on Twitter: [https://twitter.com/YourVote\\_UK](https://twitter.com/YourVote_UK).



enfranchisement or indeed to specifically inform qualifying *CW and Irish citizens* of their right to vote in all elections. Moreover, as noted above, official information on the UK government website is available only in English & Welsh. Its report on the 2014 European Parliamentary Elections<sup>59</sup> does not indicate that the Electoral Commission has taken a more targeted approach to promoting voting registration before that electoral process, despite the divergent franchise which includes all EU27 citizens.

## 2.4 Political parties' membership and candidacy

**Membership:** While it is possible for a person who meets candidacy eligibility criteria (below) to stand as independent candidates, the salience of membership of political parties to the exercise of electoral rights cannot be underestimated.

Party membership requirements vary.<sup>60</sup> Some parties, such as the Scottish National Party,<sup>61</sup> UK Independence Party,<sup>62</sup> the Green Party<sup>63</sup> and the Liberal Democrats,<sup>64</sup> allow potential members *living anywhere in the world* to join, *regardless of whether they are UK citizens*. The Conservative Party only admits UK *residents*, but does not require members to hold British citizenship.<sup>65</sup> The Labour Party,<sup>66</sup> which has the highest number of members and highest number of non-British born members, is the strictest with regard to membership, admitting only residents who have lived in the UK for at least one year (for party membership in the UK, see the 2018 House of Commons report<sup>67</sup>).

**Candidacy:** eligible electors can generally stand as a candidate in the respective election, subject to *non-nationality-specific* additional restrictions pertaining to the type of election.<sup>68</sup>

As per electors, candidates in **European Parliamentary elections** must make declaration that they are not standing as a candidate at the same election in any other EU MS. In addition, they must declare that they have not been disqualified from standing for election in the EU MS of which they are a national due to a judicial or administrative decision. The decentralised nature of electoral registration greatly inhibits verification.

<sup>59</sup> *The European Parliamentary Elections and the local government elections in England and Northern Ireland May 2014* (July 2014); available at:

[https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0010/169867/EP-and-local-elections-report-May-2014.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0010/169867/EP-and-local-elections-report-May-2014.pdf).

<sup>60</sup> For a useful guide, see Donna Ferguson, 'Want to get involved in party politics? It costs less than you think' (The Guardian, 13 June 2015); available at: <https://www.theguardian.com/money/2015/jun/13/party-politics-cost-getting-involved-pitfalls>.

<sup>61</sup> Available at: <https://www.snp.org/our-vision/constitution/>.

<sup>62</sup> Available at: [https://www.ukip.org/uploads/party\\_rules.pdf](https://www.ukip.org/uploads/party_rules.pdf).

<sup>63</sup> Available at: <https://campaigns.greenparty.org.uk/>.

<sup>64</sup> Available at: <https://www.libdems.org.uk/constitution>.

<sup>65</sup> Available at: <https://www.conservatives.com/join>.

<sup>66</sup> Available at: <https://theclearionmag.org/wp-content/uploads/2018/03/LabourRuleBook2018.pdf>

<sup>67</sup> House of Commons, Membership of UK Political Parties (3 September 2018); available at:

<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN05125>.

<sup>68</sup> For a list of disqualifications for elections to local authorities, see The Electoral Commission, *Local Elections in England and Wales, Guidance for candidates and agents* (September 2018) section 1.3; available at:

[http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0007/141784/Part-1-Can-you-stand-for-election-LGEW.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0007/141784/Part-1-Can-you-stand-for-election-LGEW.pdf). For a list of disqualifications for elections to the European Parliament, see:

[https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0020/163523/EPE-Part-1-Can-you-stand-for-election.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0020/163523/EPE-Part-1-Can-you-stand-for-election.pdf).

Unfortunately, there is no available data on the number of candidates in local government and/or European Parliamentary elections who hold non-UK citizenship, be it CW (including Maltese and Cypriots), RoI, or EU24. Anecdotally, the present author stood as a candidate in Oxford District Council elections, North Ward,<sup>69</sup> and the nomination form for this post, as per the template offered by the Electoral Commission, included no reference to the candidate's nationality, which suggests that such data is not ordinarily collected by EROs.<sup>70</sup>

## 2.5 Turnout

There was considerable **media discussion** of the possibility that EU27 citizens would use the May 2018 local government elections to send a message to the government<sup>71</sup> as well as to Her Majesty's official opposition,<sup>72</sup> and newspapers published columns by EU27 citizens regarding the significance of participation in view of the Brexit vote.<sup>73</sup>

**Targeting by political parties:** Prior to the May 2018 local government elections in England, The Liberal Democrats launched an online campaign in 21 European languages to encourage EU27 citizens to register and to vote for the party, in part as an expression of opposition to Brexit.<sup>74</sup> The campaign refers to May 2018 being EU27 citizens' potentially last vote (see section 4 below). It appears to have been the first such overt campaign by UK political parties specifically targeting EU27 citizens. The Labour London Mayor, Sadiq Khan, made a similar plea to voters in London.<sup>75</sup>

<sup>69</sup> Oxford City Council, Statement of Persons Nominated for 3 May 2018 elections; available at:

[https://www.oxford.gov.uk/downloads/file/4537/statement\\_of\\_persons\\_nominated\\_-\\_city\\_elections](https://www.oxford.gov.uk/downloads/file/4537/statement_of_persons_nominated_-_city_elections)

<sup>70</sup> The template form requires a candidate to make the following declaration: 'I declare that on the day of my nomination I am qualified and that, if there is a poll on the day of election, I will be qualified to be so elected by virtue of being on that day or those days a qualifying Commonwealth citizen, a citizen of the Republic of Ireland or a citizen of another Member State of the European Union who has attained the age of 18 years.' See: [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0003/183450/Nomination-pack-incl-election-agent-notification-form-LGEW.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0003/183450/Nomination-pack-incl-election-agent-notification-form-LGEW.pdf).

<sup>71</sup> The Economist, 'Britain's EU Migrants get a first chance to vote since the referendum' (8 March 2018); available at: <https://www.economist.com/britain/2018/03/08/britains-eu-migrants-get-a-first-chance-to-vote-since-the-referendum>.

<sup>72</sup> See eg Pauline Bock, 'They voted against our rights: will EU citizens punish Labour in the local elections?' (the New Statesman, 22 February 2018); available at: <https://www.newstatesman.com/politics/brexit/2018/02/they-voted-against-our-rights-will-eu-citizens-punish-labour-local-elections>.

<sup>73</sup> See eg Pauline Bock, 'As an EU citizen I cherish my last ever vote in UK local elections' (the Guardian, 10 April 2018); available at: <https://www.theguardian.com/commentisfree/2018/apr/10/eu-citizen-uk-local-elections>.

<sup>74</sup> ALDC, 'Lib Dems launch campaign to win local election support from EU citizens' (7 March 2018); available at: <https://www.aldc.org/2018/03/lib-dems-launch-campaign-to-win-local-election-support-from-eu-citizens/>. See also Laura Hughes, 'Lib Dems target EU nationals in council elections' (Financial Times, 23 April 2018); available at: <https://www.ft.com/content/7f81e162-4491-11e8-803a-295c97e6fd0b>.

<sup>75</sup> Joe Murphy, 'Sadiq Khan urges London's EU citizens to punish Theresa May for 'Brexit Chaos' in spring local elections' (Evening Standard, 19 February 2018); available at: <https://www.standard.co.uk/news/politics/sadiq-urges-londons-eu-citizens-to-punish-theresa-may-for-brexit-chaos-in-spring-elections-a3769901.html>. See also Sabrina Huck, 'This is the last time EU citizens can vote and we should vote Labour' (Labour List, 9 April 2018); available at: <https://labourlist.org/2018/04/this-is-the-last-time-eu-citizens-can-vote-and-we-should-vote-labour/>.

*The 3 Million*,<sup>76</sup> a grassroots organisation aiming to represent interests of EU27 citizens in the UK, published ‘campaign asks’ of local government elections candidates<sup>77</sup> (a common practice in the UK) and a campaigning toolkit<sup>78</sup> to be used by its members in the leadup to the May 2018 local elections. One of their campaigners suggested that a significant turnout ‘might help advocate for bilateral agreements that will protect their right to vote beyond Brexit’.<sup>79</sup>

**Turnout data:** The Electoral Commission published general information regarding turnout in the 2014 European Parliamentary Elections (35.6% of registered voters) and in local government elections held in England (36%) and Northern Ireland (51.3%) that year.<sup>80</sup> Turnout data regarding *general elections* from 1992-2017 is similarly available on its website<sup>81</sup> as is turnout data in the 2018 local government elections.<sup>82</sup> There is no available data offering a breakdown of the turnout of *EU27 citizens* in European Parliamentary elections and/or of *EU24 citizens* in local government elections.

### 3. Non-resident citizens’ franchise in national and EP elections when residing in other EU Member States

There are *no discernible differences* between general and European Parliamentary elections in respect of non-resident UK citizens regarding the franchise, voter registration, and voting methods. *No distinction* is drawn between UK citizens residing elsewhere in the EU and UK citizens residing outside the EU.

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<sup>76</sup> See: <https://www.the3million.org.uk/your-vote-matters>.

<sup>77</sup> Available at: <https://www.the3million.org.uk/what-to-ask-your-candidates>.

<sup>78</sup> Available at: <https://www.the3million.org.uk/elections-toolkit>.

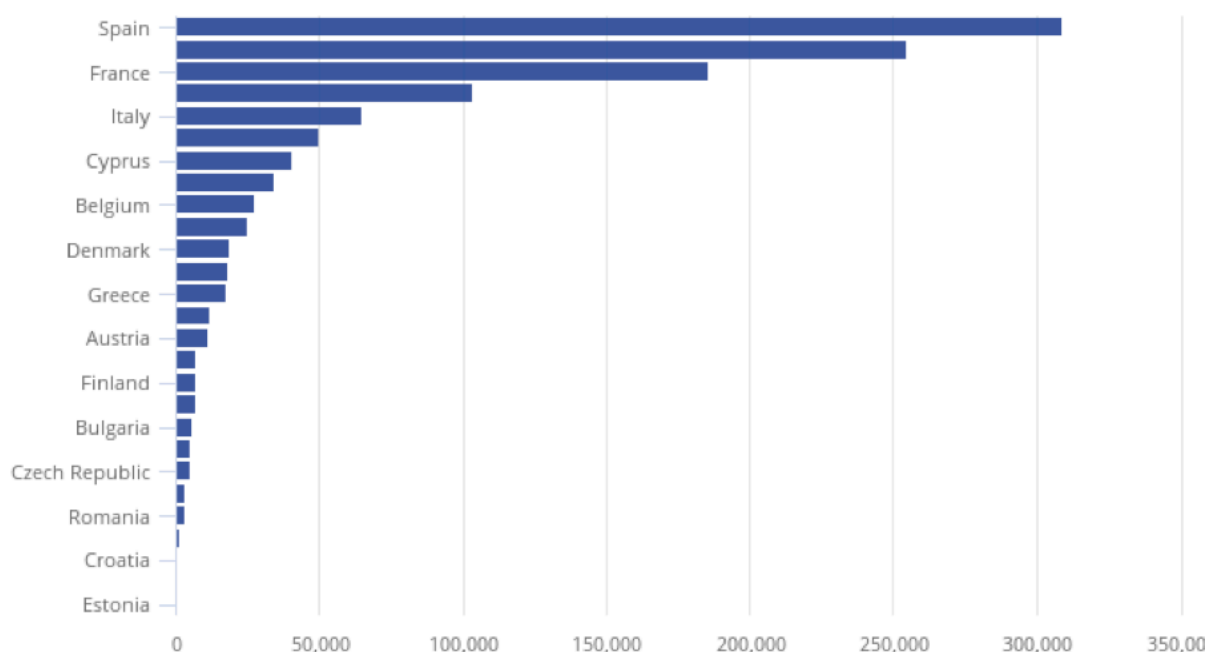
<sup>79</sup> Kuba Jablonoski, ‘EU Citizens must vote in Next Month’s local Elections’ (Huffpost, 16 April 2018); available at: [https://www.huffingtonpost.co.uk/entry/eu-citizens-must-vote-in-next-months-local-elections\\_uk\\_5ad4b28ee4b0edca2cbc3917](https://www.huffingtonpost.co.uk/entry/eu-citizens-must-vote-in-next-months-local-elections_uk_5ad4b28ee4b0edca2cbc3917).

<sup>80</sup> The Electoral Commission, *The European Parliamentary Elections and the local government elections in England and Northern Ireland May 2014* (July 2014); available at: [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0010/169867/EP-and-local-elections-report-May-2014.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0010/169867/EP-and-local-elections-report-May-2014.pdf) at [1.3.8].

<sup>81</sup> See: <https://www.electoralcommission.org.uk/our-work/our-research/electoral-data>.

<sup>82</sup> Data available at: <https://www.electoralcommission.org.uk/our-work/our-research/electoral-data/electoral-data-files-and-reports>.

Figure 1. Number of UK born migrants living in other EU Member States, 2015 estimate



Source: United Nations "Trends in International Migrant Stock: Migrants by destination and origin" (United Nations, Department of Economic and Social Affairs, Population Division, (2015)

### 3.1. Overview of relevant administrative regulations

Section 1 (extension of parliamentary franchise) of the Representation of the People Act 1985<sup>83</sup> states that: '(1) A person is entitled to vote as an elector at a parliamentary election in any constituency if (a) he qualifies as an overseas elector in respect of that constituency on the date on which he makes a declaration under and in accordance with section 2 of this Act; (b) on that date and on the date of the poll (i) he is not subject to any legal incapacity to vote, and (ii) he is a British citizen; and (c) on the date of the poll he is registered in a register of parliamentary electors for that constituency'.

At present, pursuant to section 2 of the above act, a 15-year non-residence bar applies to participation (in parliamentary and European parliamentary) elections, except in respect of servicepersons in the armed forces and Crown servants, as well as a requirement of having been previously registered with a UK address, the latter being waived for those who had left prior to the eligibility age (18 at present). Such persons can register as an overseas voter if their parent or guardian had been registered to vote, so long as they have left the UK less than

<sup>83</sup> n31 above, as amended by s141 of the Political Parties, Elections and Referendums Act 2000 c. 41.

15 years ago. In the case of the latter category, the first overseas voter's declaration must also be accompanied by a copy of their birth certificate, which must show the names of either or both of their parents and their date of birth.<sup>84</sup>

### 3.2 Voter Registration

Section 2 (Registration of British citizens overseas) of the above act states that '(1) A person is entitled to be registered in a register of parliamentary electors in pursuance of a declaration made by him under and in accordance with this section...if (a) the register is for the constituency or part of the constituency within which is situated the place in the UK specified in the declaration...as having been the address (i) in respect of which he was registered, or (ii) at which he was resident, as the case may be, and (b) the registration officer concerned is satisfied that, on the relevant date, he qualifies as an overseas elector in respect of that constituency for which that register is prepared'.

Electoral registration, as per EU27 citizens in the UK, is *not automatic, nor is it automatically renewed*. The electoral register is *updated annually*, and UK citizens living abroad are required to renew their registration annually, *not least due to the 15-year limit* that would prompt an ERO to refuse registration for those exceeding that period. The previous requirement that another British passport holder would countersign the registration form was dropped.<sup>85</sup>

Registration can be done *online*, both for parliamentary elections and for European parliamentary elections. A British citizen living abroad who is registered as an overseas elector is *not eligible* to vote in the local government elections listed in Section 2 above.

As above, there are *two* separate registration services for public servants who are likely to be posted overseas: first, for *Crown servants e.g. diplomatic or overseas civil service, a British Council employee or the spouse or civil partner thereof* (using National Insurance number and a payroll or staff ID number). Second, for *members of the Armed Forces or the spouse or civil partner thereof* (using National Insurance number and a service number).<sup>86</sup>

The deadline for overseas electors to register to be included on the register used on polling day is the same as for UK residents: midnight, 12 working days before polling day. *Once registered, like other voters, overseas electors can vote by post or proxy, or in person at their allotted polling station if they happen to be present in the UK at the time of the election.*

The introduction of online registration in 2014 has arguably led to a dramatic rise in the number of *registered overseas electors*. The Electoral Commission notes<sup>87</sup> that 285,000

<sup>84</sup> Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341 Reg 19.

<sup>85</sup> Electoral Registration and Administration Act 2013 c. 6.

<sup>86</sup> See Representation of the People Act (England and Wales) Regulations 2001 No. 341; Available at: <https://www.legislation.gov.uk/ukksi/2001/341/contents/made>; Representation of the People Act (Scotland) (Amendment) Regulations 2018 No 427 amending Representation of the People Act (Scotland) Regulations 2001 No 497; Available at: <https://www.legislation.gov.uk/ukdsi/2018/9780111163634>; Representation of the People Act (Northern Ireland) Regulations 2008 No 1741; available at: <https://www.legislation.gov.uk/ukksi/2008/1741/contents/made>.

<sup>87</sup> The Electoral Commission, *The Administration of the June 2017 General Election* (December 2017); available at: [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0003/238044/The-administration-of-the-June-2017-UK-general-election.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0003/238044/The-administration-of-the-June-2017-UK-general-election.pdf) at [2.4.6].

British citizens were registered as overseas electors at the 2017 General Election, a significant increase compared with 2010 (33,000 overseas electors) and 2015 (106,000 overseas electors). The Office of National Statistics offers collated information on ‘[t]he number of overseas electors who were registered to vote in UK Parliamentary and European Parliamentary elections’ by UK geographical region, but not by country of residence.<sup>88</sup>

In respect of the 2014 European Parliamentary elections, the Electoral Commission claims to have run ‘an online registration campaign aimed at British expatriates in the top 10-20 countries with a high British expatriate population’<sup>89</sup> and registration numbers have gone up further since then. Nonetheless, the latest (2017) figure represents (only) roughly 20% of eligible voters under the existing criteria.

Indeed, in its 2017 report the Electoral Commission noted that: ‘British citizens who live overseas are a particularly challenging audience to reach. The dispersed nature of, and lack of data on, the potential overseas electorate makes it difficult to produce reliable statistics’ and intimated that ‘there is no estimate at all for the sub-set of eligible electors who meet the requirement of being on a UK register within the last 15 years’.<sup>90</sup>

In response to a Parliamentary Question in February 2017, Chris Skidmore MP (on behalf of the government) ‘estimated that a further 3 million British citizens resident overseas will be enfranchised under the “votes for life” proposals’<sup>91</sup> (discussed in section 3.3 below).

### 3.3 Turnout

The Electoral Commission’s turnout data<sup>92</sup> offers a regional breakdown that distinguishes between postal and in-person voting turnout; but it offers no specific breakdown of turnout among non-resident UK citizens, who (as noted above) vote in their local constituencies. Given the number of registered overseas voters (285,000 or 0.6% of the electorate), and the UK overall turnout among those voting by post (85.1% viz. 65.9% for in-person turnout), one may speculate that registered overseas electors’ turnout is closer to the overall postal vote turnout.

#### *Political debates on non-resident citizens’ franchise*

The Conservative Party manifestos for both the 2015<sup>93</sup> and 2017<sup>94</sup> General Elections committed to introduce a ‘Votes for Life’ bill. On 23 February 2018, the Overseas Electoral

<sup>88</sup> Office of National Statistics, Electoral Statistics, UK: 2017; available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/elections/electoralregistration/bulletins/electoralstatisticsforuk/2017>.

<sup>89</sup> The Electoral Commission, *The European Parliamentary elections and the local government elections in England and Northern Ireland May 2014* (July 2014); available at: [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0010/169867/EP-and-local-elections-report-May-2014.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0010/169867/EP-and-local-elections-report-May-2014.pdf).

<sup>90</sup> n87 at [3.16].

<sup>91</sup> ‘British Nationals Abroad: Voting Rights : Written Question- 64729’ (21 February 2017); available at: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-02-21/64729/>.

<sup>92</sup> The Electoral Commission, *UK Parliamentary General Election, June 2017* (October 2017); available at: [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0004/234976/UKPGE-2017-electoral-data-report.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0004/234976/UKPGE-2017-electoral-data-report.pdf).

<sup>93</sup> Available at: <https://www.bond.org.uk/data/files/Blog/ConservativeManifesto2015.pdf>.

<sup>94</sup> Available at: <https://www.conservatives.com/manifesto>.

Bill,<sup>95</sup> which abolishes the 15-year bar, passed second reading with a clear majority in the UK House of Commons<sup>96</sup> and will now proceed for scrutiny by a Public Bill Committee. It was presented as a private member's bill by Glyn Davies MP (Conservative) and sponsored, *inter alia*, by Mike Gapes MP (Labour) and Layla Moran MP (Liberal Democrats).<sup>97</sup>

The Bill seeks to amend Sections 1 and 2 of the Representation of the People Act 1985 (above) by enfranchising overseas electors irrespective of the length of their absence from the UK or whether they were previously registered to vote in the UK, provided they had a fixed address in the UK at some point in their lives or, absent a fixed address, make a 'declaration of local connection' in respect of such an address. The Bill does not enfranchise UK citizens born abroad who have never resided in the UK. Cabinet Office minister Chloe Smith MP set out the UK Government's firm support for the bill,<sup>98</sup> and its intention for the new system to apply in the 2022 General Election.

Overseas electors vote for an MP representing a constituency in the UK, even if they have only lived in that constituency briefly, a long time ago. A petition which attracted over 10,000 signatories 'proposes to introduce votes for life and to add overseas constituencies with a dedicated MP for each constituency to better represent British Citizens living abroad'.<sup>99</sup> The Government responded that it 'remains committed to introducing "votes for life" ahead of the next scheduled General Election in 2022 but has no plans to create overseas constituencies'.<sup>100</sup>

## 4. Conclusions and policy recommendations

### Legal obstacles for political participation

#### *Selective exclusion from the parliamentary franchise*

Those who believe that only *full and permanent* members of the polity, namely its (adult) citizens, should be entitled to make such decisions about the future of their polity, ought to be concerned about the mass exclusion of non-resident citizens from participation in parliamentary elections, as well as about the *selective* inclusion of non-citizens; on this account, the parliamentary franchise is over- and under-inclusive. The franchise follows neither a citizenship nor a residence basis; its supporters struggle to find a contemporary

<sup>95</sup> Available at: <https://publications.parliament.uk/pa/bills/cbill/2017-2019/0016/18016.pdf>.

<sup>96</sup> Hansard Vol 636 col 486 (23 February 2018); available at: <https://hansard.parliament.uk/commons/2018-02-23/debates/9F6393F6-339C-4813-8C24-BDC41623DF10/OverseasElectorsBill>.

<sup>97</sup> Full a fuller discussion, see: Ruvi Ziegler, "'Votes for Life' Bill passes second reading in the UK House of Commons' (GlobalCIT, 26 February 2018); available at: <http://globalcit.eu/votes-life-bill-passes-second-reading-uk-house-commons/>.

<sup>98</sup> Cabinet Office (23 February 2018); available at: <https://www.gov.uk/government/speeches/chloe-smith-writes-about-votes-for-life-for-british-expats>.

<sup>99</sup> 'Give all British citizens living abroad the right to vote and dedicated MPs' (Petitions, UK Government and Parliament, closed on 13 March 2018); available at: <https://petition.parliament.uk/petitions/200005>.

<sup>100</sup> Id.

justification for its retention, its pedigree notwithstanding.<sup>101</sup> In contrast, those who contend that the franchise should reflect habitual residence, rather than citizenship, should be concerned about the exclusion of most resident non-citizens, *including EU24 citizens*.<sup>102</sup>

### *Ramifications for EU24 citizens*

The differentiated regime for the parliamentary franchise which enfranchises (only) RoI and CW citizens, including Maltese and Cypriots, arguably undermines the equality of political rights among EU27 citizens. The discrepancy has the potential to confuse both eligible and ineligible voters.

### *Ramifications for non-resident citizens*

While the right to vote is not absolute, its exercise should not be curtailed to such an extent as to impair its ‘very essence’ and deprive it of its effectiveness, which the 15-year bar does. By offering its unequivocal support for the Overseas Electors bill, above, the UK government has recognised that the 15-year non-residence bar is arbitrary.<sup>103</sup> However, legal challenges have hitherto been unsuccessful.

Harry Shindler, a British citizen who has been living in Italy since 1982, and Jacquelyn MacLennan, who has been living in Brussels since 1987, challenged the exclusion of long-term non-residents from the referendum on EU membership.<sup>104</sup> They contended that, depriving non-resident citizens of their right to vote is tantamount to penalising them for having exercised their EU treaty free movement rights and is thus in breach of EU law. The High Court rejected the claim,<sup>105</sup> and the Court of Appeal dismissed their appeal against the judgment.<sup>106</sup>

The challenge to the legality of the referendum franchise followed an earlier challenge brought by Mr Shindler to the European Court of Human Rights (ECtHR) against the legality of the parliamentary franchise. The ECtHR found,<sup>107</sup> no violation of Article 3 of Protocol No 1 (right to free elections) of the European Convention on Human Rights,<sup>108</sup> ‘having regard to the margin of appreciation available to the UK in regulating its parliamentary elections’.

<sup>101</sup> See, for instance, the House of Commons debate on the then EU (Referendum) Bill. The referendum franchise followed the parliamentary franchise, save for inclusion of Gibraltarians and Peers. Hansard vol 597 col 494, 18 June 2015; available at:

<https://publications.parliament.uk/pa/cm201516/cmhansrd/cm150618/debtext/150618-0002.htm#15061885000001>.

<sup>102</sup> For further discussion, see Ruvi Ziegler, ‘The ‘Brexit’ Referendum: we need to talk about the (General Election) Franchise’ (Verfassungsblog, 7 October 2015); available at: <https://verfassungsblog.de/the-brexit-referendum-we-need-to-talk-about-the-general-election-franchise/>.

<sup>103</sup> See Reuven (Ruvi) Ziegler, ‘Voting Eligibility: Strasbourg’s Timidity’ in Loveday Hodson, Liz Wicks and Katja Ziegler (eds), *The UK and European Human Rights: A Strained Relationship?* (Hart, 2015) 165-191.

<sup>104</sup> See Ruvi Ziegler, ‘The referendum of the UK’s EU membership: No legal salve for its disenfranchised non-resident citizens’ (Verfassungsblog, 21 June 2016); available at: <https://verfassungsblog.de/the-referendum-of-the-uks-eu-membership-no-legal-salve-for-its-disenfranchised-non-resident-citizens/>.

<sup>105</sup> *Shindler and MacLennan v. Chancellor of the Duchy of Lancaster* [2016] EWHC 957, 28 April 2016; available at: <https://www.judiciary.uk/wp-content/uploads/2016/04/shindler-final.pdf>.

<sup>106</sup> *R (on the application of Shindler) v Chancellor of the Duchy of Lancaster* [2016] EWCA Civ 469, 20 May 2018; available at: <https://www.judiciary.uk/wp-content/uploads/2016/05/approved-judgment-rhd-shindler-2.pdf> (the Supreme Court, following an oral hearing held on 24 May 2018, refused to grant leave).

<sup>107</sup> *Shindler v UK* [2013] ECHR 423; available at: <https://tinyurl.com/yc8dehbg>.

<sup>108</sup> Available at: [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf).



In July 2018, the General Court of the EU heard Mr Shindler’s challenge to the EU Council’s decision to authorise EU negotiators to negotiate the UK’s withdrawal, in light of the alleged illegality of the franchise. The case is pending at the time of writing.<sup>109</sup>

## Practical obstacles for political participation

### *Non-automatic electoral registration*

It can be argued that non-automatic electoral registration, coupled with the different franchises (as above), act as multipliers that are likely to cause an under-representation of EU27 citizens (and especially of *EU24 citizens*) among registered electors and, consequently, among voters. This is particularly relevant for those citizens of MS who are used to an *automatic* voter registration system in their country of nationality.

In its report on the 8 June 2017 General Election (its conclusions apply *mutatis mutandis* to other UK elections), the Electoral Commission noted that: ‘several countries have already implemented forms of direct or automatic electoral registration to help meet challenges similar to those now facing Electoral Registration Officers in Great Britain’ suggesting that ‘these systems enable those with responsibility for maintaining the electoral register to register electors automatically using reliable and trusted information from other public sources, or to update their details when they move without the elector having to “re-register” at their new address’.<sup>110</sup>

Meanwhile, coupled with the 15-year bar, the requirement to renew registration annually makes it less likely that non-resident citizens abroad will be registered to vote.<sup>111</sup> Should the Overseas Electors Bill become law, in addition to substantively increasing the pool of eligible voters, it is likely to generate greater long-term interest among non-resident citizens and indeed to reduce confusion regarding their eligibility.

### *Insufficient targeting*

The Electoral Commission generally promotes voter registration<sup>112</sup> and voting<sup>113</sup> but does *not* proactively seek to inform *EU24 citizens* about their (limited) eligibility as well as Cypriot, Maltese, and Irish citizens as to their (full) eligibility. Hence, it is perhaps unsurprising that EU27 citizens are less likely to register to vote.

### *European Parliamentary declaration form*

<sup>109</sup> Case T-458/17 *Shindler and others v Council*; terms of reference available at: <https://tinyurl.com/yaazdvx9>.

<sup>110</sup> The Electoral Commission, *Electoral Registration at the June 2017 UK general election* (July 2017); available at: [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0003/232761/Electoral-registration-report-July-2017.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0003/232761/Electoral-registration-report-July-2017.pdf) at [1.6.8].

<sup>111</sup> In the Second Reading debate on the Overseas Electors Bill 2017-19, Cabinet Office Minister said that the number of registered overseas voters (residing in the EU and elsewhere) at the June 2017 General Election, just over 285,000, represented about only 20% of the number likely to be eligible under existing eligibility rules. Hansard HC vol 636 col 486 (23 February 2018); available at: <https://tinyurl.com/ybncuev2>.

<sup>112</sup> See eg <https://twitter.com/ElectoralCommUK/status/986163629631442944>.

<sup>113</sup> See eg <https://twitter.com/ElectoralCommUK/status/991221966462947328>.

Challenges arose regarding participation of EU27 citizens in the 2014 European parliamentary elections,<sup>114</sup> given the requirement to sign a declaration form prior to the date of the poll. Concerns pertain to EROs failing to provide EU27 citizens with a form at the time of registration coupled with inability to sign the form at the time of voting, as proposed by *New Europeans*.<sup>115</sup>

### *Transition to IER*

Section 69 of the Electoral Administration Act 2006<sup>116</sup> requires EROs to ‘take such steps as [they] think appropriate to encourage the participation by electors in the electoral process in [their] area’. The transition to IER carried the risk of inadvertently disenfranchising otherwise eligible voters, which explains why the legislation governing the transition to IER includes provisions requiring EROs to encourage new applications.<sup>117</sup>

### **Anticipated Brexit-related obstacles**

The analysis below is based, in part, on written evidence the author submitted on 24 November 2017 to the House of Lords’ EU (Justice) Sub-committee ‘Brexit: Citizens’ rights’ Inquiry.<sup>118</sup>

### *European parliamentary elections: Northern Ireland*

Schedule 9 of the EU (Withdrawal) Act 2018<sup>119</sup> lists the European Parliamentary Elections Act 2002<sup>120</sup> and the European Parliament (Representation) Act 2003<sup>121</sup> among the Acts to be wholly repealed if the UK leaves the EU. Consequently, it is envisaged that European parliamentary elections will no longer be held in the UK, *including Northern Ireland*. This is notwithstanding the fact that, Article 1.iv of the ‘Good Friday’ Agreement<sup>122</sup> recognises ‘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’. The most likely outcome is, therefore,

<sup>114</sup> See eg Alex Andreau and Shiv Malik, ‘EU citizens stopped from voting in UK after confusion over registration forms’ (24 May 2014, the Guardian); available at:

<https://www.theguardian.com/politics/2014/may/24/eu-citizens-prevented-voting-confusion-registration-forms>.

<sup>115</sup> See Roger Casale, *written evidence*, House of Commons Political and Constitutional Reform Committee (26 June 2014); available at:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/political-and-constitutional-reform-committee/voter-engagement-in-the-uk/written/10904.html>.

<sup>116</sup> c. 22; available at: <https://www.legislation.gov.uk/ukpga/2006/22/section/69>.

<sup>117</sup> Electoral Registration and Administration Act 2013, sch 5.

<sup>118</sup> Available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-justice-subcommittee/brexit-citizens-rights/written/74721.pdf>. See also House of Commons, Exiting the European union Committee, *The Progress of the UK’s negotiations on EU withdrawal: the rights of UK and EU citizens* (23 July 2018); available at:

[report.https://publications.parliament.uk/pa/cm201719/cmselect/cmexeu/1439/1439.pdf](https://publications.parliament.uk/pa/cm201719/cmselect/cmexeu/1439/1439.pdf).

<sup>119</sup> c. 16; available at: <http://www.legislation.gov.uk/ukpga/2018/16/contents/enacted>.

<sup>120</sup> c. 24; available at: <https://www.legislation.gov.uk/ukpga/2002/24/contents>.

<sup>121</sup> c. 7; available at: <https://www.legislation.gov.uk/ukpga/2003/7/contents>.

<sup>122</sup> *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland* (Belfast, 10 April 1998); available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/136652/agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf).

that a region where a very large majority of residents are eligible to be citizens of a (remaining) EU MS (RoI) will not be represented in the European Parliament.<sup>123</sup>

#### *European parliamentary elections: EU27 citizens resident in the UK as a third country*

According to a 2015 European Parliament report,<sup>124</sup> five EU MS (Germany, Denmark, Cyprus, Malta, and the RoI) deprive their citizens, under varying conditions (table 3.2 thereof) of the right to vote in EP elections when they reside *outside the Union*. Thus, (some) citizens of Germany, Denmark, Cyprus, Malta, and RoI residing in the UK stand to be disenfranchised in the 2019 European parliamentary elections, unless their MS of citizenship amend their legislation to enfranchise their citizens resident outside the Union to vote, or make an exception for residents of a former MS.<sup>125</sup> The argument for enfranchisement is particularly strong: such citizens have not voluntarily moved to a third country, but have resided *in a MS*, exercising EU treaty rights, and now reside in a former MS. As per the ECJ's *Delvigne*<sup>126</sup> ratio, given that their MS of citizenship are implementing EU law, legal challenges to exclusion may ensue.

#### *Local government ('municipal') elections in the UK: EU24 citizens*

The local government franchise extends eligibility to resident EU24 citizens in fulfilment of the UK's EU membership obligations. It remains unclear whether eligibility will continue if the UK leaves the EU. In a statement on 13 November 2017 in the House of Commons, the then Secretary of State for Exiting the EU noted:<sup>127</sup> 'the Commission has not yet matched the UK's offer in relation to the right to stand and vote in local elections, which is a core citizen's right that is nominally enshrined in the EU treaties. I have been disappointed that the EU has been unwilling to include voting rights in the withdrawal agreement so far. As a result, we will pursue the issue bilaterally with member states'.

The majority of EU MS restrict participation in all electoral processes to their citizens, except where EU law otherwise requires. Other MS, including those that have ratified the Council of Europe's *Convention on the Participation of Foreigners in Public Life at the*

<sup>123</sup> Alternatively, the 3 NI electors can be reallocated to the RoI, and the Irish franchise can be extended to include non-resident Irish citizens. For discussion see Sylvia de Mars, Colin Murray, Aoife O'Donoghue, and Ben Warwick, *Bordering Two Union: Northern Ireland and Brexit* (Policy Press 2018) 39-46; available at: <http://www.oopen.org/search?identifier=1000392>.

<sup>124</sup> European Parliament, *Disenfranchisement of EU citizens resident abroad* (June 2015); available at: [http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/564379/EPRS\\_IDA\(2015\)564379\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/564379/EPRS_IDA(2015)564379_EN.pdf).

<sup>125</sup> Relatedly, according to Eurostat data published on 9 April 2018, the number of UK citizens acquiring citizenship of another EU MS in 2016 (6,555) represents a 165% increase compared with 2015 data (2,478). The most likely explanation for the significant increase is the prospects of Brexit. Available at: <https://ec.europa.eu/eurostat/documents/2995521/8791096/3-09042018-AP-EN.pdf/658455fa-c5b1-4583-9f98-ec3f0f3ec5f9>.

<sup>126</sup> C-650/13 *Delvigne v Commune de Lesparre-Médoc* (6 October 2015). The case concerned the legality, under EU law, of the exclusion from voting in EP elections of a French national sentenced to 12 years' imprisonment for murder. The ECJ accepted [33] that, by determining the franchise for European parliamentary elections, EU MS 'must be considered to be implementing EU law'. The Court held [45] that 'the deprivation of the right to vote represents a limitation of the exercise of the right of EU citizens to vote in elections to the European Parliament'.

<sup>127</sup> Hansard vol 631 col 36; available at: <https://hansard.parliament.uk/Commons/2017-11-13/debates/5BDC985B-DAD3-45F6-B1E8-A28ADAB22561/EUExitNegotiations>.

*Local Level*<sup>128</sup> extend the local franchise to all non-citizen residents, including TCNs.<sup>129</sup> Should the EU maintain its (collective) position in respect of UK citizens in the EU27 post-Brexit, the UK government appears to be prepared to exclude e.g. German citizens from voting and standing in local government elections, including those currently serving in elected posts.

Clause 8 of the European Union (Withdrawal) Act 2018 ('[d]ealing with deficiencies arising from withdrawal') would authorise a minister to use the power, *inter alia*, to limit electoral rights.<sup>130</sup> The House of Commons Existing the EU Select Committee's July 2018 report concluded that '[w]e trust that the UK Government and devolved administrations will continue to enable EU citizens living in the UK to stand and vote in local elections and in elections to the Scottish Parliament, Welsh and Northern Ireland Assemblies'.<sup>131</sup>

### *Local government ('municipal') elections in the EU27: UK citizens*

At present, EU law considers electoral rights of TCNs in 'municipal' elections to be a matter of national law. The December 2017 Joint Report of the EU Article 50 Task Force and UK government negotiators,<sup>132</sup> and the February 2018 draft Withdrawal Agreement<sup>133</sup> are *silent* on retention of existing voting rights. In March 2018, the European Parliament 'insist[ed] that... voting rights in local elections for all citizens [be] covered by the Withdrawal Agreement'.<sup>134</sup>

## **Good practice and policy recommendations**

### *Averting loss of (EU citizenship) rights*

If the UK leaves the EU on 29 March 2019,<sup>135</sup> pursuant to the presumption that, on exit day, all UK citizens who do not hold the citizenship of another EU MS (including UK citizens in the EU27) will become TCNs, their exclusion from voting and standing in the 2019 European Parliamentary elections will likely ensue. Several UK citizens resident in the Netherlands

<sup>128</sup> Strasbourg, 5 February 1992; available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/144>.

<sup>129</sup> See British in Europe, *Written evidence*, House of Commons, Exiting the EU Select Committee (June 2018) [46]; available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/exiting-the-european-union-committee/the-progress-of-the-uks-negotiations-on-eu-withdrawal/written/84016.pdf>.

<sup>130</sup> c. 16; available at: <http://www.legislation.gov.uk/ukpga/2018/16/contents/enacted/data.htm>.

<sup>131</sup> n118 above [27].

<sup>132</sup> *Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union* (8 December 2017); available at: [https://ec.europa.eu/commission/sites/beta-political/files/joint\\_report.pdf](https://ec.europa.eu/commission/sites/beta-political/files/joint_report.pdf).

<sup>133</sup> European Commission, Draft Withdrawal Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (28 February 2018); available at: [https://ec.europa.eu/commission/sites/beta-political/files/draft\\_withdrawal\\_agreement.pdf](https://ec.europa.eu/commission/sites/beta-political/files/draft_withdrawal_agreement.pdf).

<sup>134</sup> European Parliament, motion for a resolution to wind up the debate on the framework of the future EU-UK relationship (7 March 2018) [52]; available at: <http://www.europarl.europa.eu/resources/library/media/20180307RES99232/20180307RES99232.pdf>.

<sup>135</sup> The Court of Session (Edinburgh) made a request to the ECJ for a preliminary ruling on the question of revocability of the notice given by the UK government on 29 March 2017 of the UK's intention to leave the EU. The case, c-621/18 Wightman and others, will be heard by the ECJ in November 2018. Terms of reference: <https://www.dropbox.com/s/3sq5dvjh8ruc2bm/Reference%20to%20the%20European%20Court.pdf?dl=0>.

brought a case before the District Court of Amsterdam seeking a reference to the ECJ. The court's decision to make a reference<sup>136</sup> was subsequently overturned.<sup>137</sup>

Meanwhile, a group of EU citizens resident in Ireland, France, Belgium, Greece, Germany, Italy, and the UK, launched a European Citizen initiative (ECI) called 'permanent EU citizenship', which the European Commission registered,<sup>138</sup> the main objective of which is to guarantee that EU citizenship and its associated rights cannot be lost once they have been attained.<sup>139</sup>

*New Europeans*, a London & Brussels based civil society organisation empowering mobile EU citizens, has been continuously campaigning to secure immediate, comprehensive, and (parallel) unilateral guarantees for EU27 citizens in the UK and for UK citizens elsewhere in the EU, to include maintenance of existing electoral rights.<sup>140</sup>

*ECREU* ('Expat Citizens Rights in EU'), which claims to have had in March 2018 over 10,000 members in all EU28 member states, has been informing its members, through newsletters, about the Shindler case (as above)<sup>141</sup> and offers a concise guide of rights for which the organisation fights in the current context.<sup>142</sup>

*British in Europe*, a self-described coalition of organisations representing UK citizens in several European countries,<sup>143</sup> and *The 3 Million*, a grassroots organisation of EU27 citizens in the UK launched a joint campaign ('the last mile'<sup>144</sup>) calling for ring-fencing of the citizens' rights chapter of the draft UK-EU27 withdrawal agreement<sup>145</sup> irrespective of whether the UK leaves the EU with an overall agreement.

### *Registration times and methods*

Data presented above demonstrates that online registration has had a significant impact on the number of registered overseas electors. It would be desirable to extend online registration to Northern Ireland. Registration can be actuated at the individual's own initiative throughout the year, facilitating participation. It would be desirable to enable voters to register closer to the date of an election, or indeed enable *same-day registration*. This would lead to increased registration rates and turnout at elections.

### *Identification of polling station address on polling cards*

It would be desirable to inform public in targeted ads of the website for searching polling stations as part of the Electoral Commission's information campaign.

<sup>136</sup> See: <https://waitingfortax.com/2018/02/13/decision-of-the-district-court-in-amsterdam/>.

<sup>137</sup> See: <https://www.dutchnews.nl/news/2018/06/appeal-judges-reject-british-eu-citizenship-claim-wont-refer-to-eu-court/>.

<sup>138</sup> See: [http://europa.eu/rapid/press-release\\_IP-18-4566\\_en.htm](http://europa.eu/rapid/press-release_IP-18-4566_en.htm).

<sup>139</sup> Further information and text available at: <https://www.eucitizen2017.org/> and on twitter: @EUCitizen201. The ECI is open for endorsements here: <https://eci.ec.europa.eu/002/public/#/initiative>.

<sup>140</sup> See eg <https://neweuropeans.net/unilateralguaranteesnow> (on twitter: #righttostay). See also New Europeans' open letter to Michel Barnier, the EU's negotiator (24 September 2018); available at: <https://neweuropeans.us15.list-manage.com/subscribe?u=8181747920adace380333ae83&id=8c9e0e74e7>.

<sup>141</sup> See: <https://www.ecreu.com/pdfs/erceu-newsletter-feb-18.pdf>.

<sup>142</sup> See: <https://www.ecreu.com/expat-rights.html>.

<sup>143</sup> See: <https://britishineurope.org/list-of-groups/coalitionmembers/> (on twitter: @BritishinEurope).

<sup>144</sup> See: <https://www.the3million.org.uk/thelastmile2>.

<sup>145</sup> See: <https://britishineurope.org/thelastmile/>.

### *Election timetable and electronic voting*

The Parliamentary election timetable was lengthened to 25 days from 17 days as per the May 2015 General Election,<sup>146</sup> making it more likely ballots papers would reach overseas voters.

Nevertheless, the introduction of electronic means of voting for overseas electors should be considered to minimise cases of postal ballots not reaching voters/electoral officers on time (given that ballot papers cannot be printed and sent out until after the close of nominations).

In the first instance, it would be desirable to allow overseas voters to print their ballots online in PDF form and return by mail should be quite easy to implement. It could also be possible to introduce the options of online applications for registration and for absent voting together with the option of e-voting by internet means.

### *Introduction of overseas constituencies*

The introduction of overseas constituencies should be considered, not least due to the convention, almost universally observed by MPs, that they deal with personal inquiries only from their own constituents. It may also increase participation.

### *Increasing registration among under-represented groups*

According to its report, in the lead-up to the General Election, the Electoral Commission targeted overseas electors in high density countries. It would be desirable to increase the use of targeted ads in future election cycles. It should also run a specific campaign aimed at citizens of other EU MS, focussing on eligibility to participate in elections (noting the differentiated regime) and how to register to vote. Information should also be disseminated in languages other than English and to work with representatives of the various European communities established in the UK.

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<sup>146</sup> s14 of the Electoral Registration and Administration Act 2013 (n47 above).

