

Remain in France Together

Information sheet



Votes for Life

This guide provides information on British citizens being able to vote in France.

One of the aspects of the 2016 referendum which most angers British citizens abroad is the disenfranchisement of many of them, namely those barred from voting by the 15-year rule. Here we look at the current situation as regards voting for UK nationals resident in the EU.

British citizens' right to vote from overseas

Until the Thatcher era there was no provision at all for overseas voters (with the exception of members of the armed forces or Crown servants, and university alumni prior to about 1950). It was in 1985 that legislation first provided for ordinary British citizens abroad to vote under certain conditions, with a five-year cut-off point, extended to 20 years in 1989, then reduced to 15 years by Labour in 2000.

Since then the Conservatives have proposed removing the limit altogether, notably in their manifestos for both the 2015 and 2017 elections. In the latter, the Tories promised: "We will continue to modernise and improve our electoral registration process, making it as accessible as possible so that every voice counts. We will legislate for votes for life for British overseas electors".

However, following those elections the Government did not put forward legislation but supported private member's bills, the most recent of which, the Overseas Electors

Bill 2017-19 (in the name of Glyn Davies), came to grief at the Report stage in March 2019 due to filibustering.

Labour had continued to oppose such legislation, notably raising arguments about non-resident donors to political parties and administrative difficulties (while supporting extension to 16/17-year olds and EU citizens in the UK)

Incidentally, the Liberal Democrat Party included a specific pledge for Votes for Life in its 2017 manifesto to enable all UK citizens living abroad to vote for MPs in separate overseas constituencies and to participate in UK referendums.

How many people are affected?

It has been estimated that about 3 million British citizens throughout the world are disenfranchised, with up to one million of those in Europe.

This would be inconceivable for the vast majority of European States, which usually grant voting rights for life.



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In 35 States out of the 47 members of the Council of Europe, no restrictions are placed on the period of absence from the country.

The Council of Europe's Venice Commission has codes of good practice for both elections and referendums stating: "it is desirable that the right to vote be accorded to citizens residing abroad".

We are sometimes challenged by people who ask "why should you be able to vote if you live abroad?". Without going into all the reasons, we believe that the right to vote is a "birth right", attached as it is to citizenship not residence – especially as we cannot vote in general elections in France (and since Brexit have lost any right to vote here altogether).

Some Brits abroad retain a closer connection with the UK (e.g. paying taxes or having parents/children there) than others, but those who don't want to vote don't have to – just because it's not important for them doesn't mean that those who do cherish the right should be deprived thereof.

The EU referendum

The 15 year rule is set out in the Representation of the People Act and applies more broadly to general elections. It was in fact open to Parliament to extend the referendum franchise, as it was set by separate legislation, but there was apparently no appetite for such a change.

MPs spent more time discussing an extension to 16/17 year-olds but ultimately rejected that idea too. The franchise was nevertheless tweaked to encompass Lords and citizens of Gibraltar.

Legal challenge

Prior to the 2016 referendum, a case was brought in the UK courts by Shindler and Maclennan to suspend the 15-year rule for the forthcoming vote.

There were a couple of major legal obstacles in terms of precedent. One was that Harry Shindler (now in his late 90s) had already complained to the European Court of Human Rights about the 15-year rule but had lost that case in 2013.

There had been previous case-law in the same vein, all applicable to national parliamentary elections (see for example, *Doyle v. the UK* (2007) about a British national living in Brussels).

The other obstacle was the previous case-law of the UK domestic courts, in particular *Preston* (2012), unsuccessfully brought by a disenfranchised British businessman in Spain. He claimed that the 15-year-rule was in conflict with EU freedom of movement, so the courts looked basically at whether the rule would deter British citizens from moving to another EU country. It is of course difficult to prove this one way or another!

The 2016 case about the referendum also focussed on this "red herring"; no real consideration was given to the implications for democracy or the fact that the outcome, this time, would directly affect the rights of the Britons concerned. Shindler and Maclennan thus lost in the High Court and Court of Appeal.

Permission to appeal to the Supreme Court was refused; concluding the admissibility hearing Lady Hale said "we have considerable sympathy for the situation in which the applicants find themselves", but that was all.



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It is rather ironic that, in a referendum which was (supposedly) all about democracy, the right to vote was not granted to such a large number of British citizens, especially those who had settled in another EU State.

Votes for life

There has been much lobbying for Votes for Life over the past few years, including by RIFT and other associations, besides the numerous petitions (the issue of the referendum being flawed for this reason has also been raised in legal proceedings before the ECJ).

Future campaigns must focus on getting a new Overseas Electors Bill back on the table – or if there is a second referendum, there is no reason why the franchise could not be extended on an ad hoc basis to, at least, those Brits living in the EU27.

Of course it would need time and would raise administrative difficulties, which is why stand-alone legislation would still be much better – otherwise it will always be too late

once another snap election or even a referendum has been called.

A reasonable solution would be to limit overseas voters to those who have previously been on an electoral roll or at least those who can prove previous residence (thereby excluding British citizens who've never lived in the UK at all).

The need to avoid fraudulent registration and to circumscribe the numbers were concerns in the debate on the last Bill. However, with the changes in constituency borders – and even the difficulty of remembering where one lived prior to departure – it wouldn't be simple. But since the UK (unlike France) does not have specific constituencies for its expatriates, this would seem to be the most feasible solution at present. Of course there are related issues such as the difficulty of casting postal votes from abroad.

We can only hope that a future Government will be more committed to modernising democracy, for the benefit of citizens like us.

Disclaimer

This is one of a series of guides and information sheets produced by Remain in France Together (RIFT). RIFT is a statutory association governed by French law and managed and run by volunteers. It exists to uphold the rights of British citizens living in, or moving to, France affected by the UK withdrawal from the EU.

The information is for general guidance and does not constitute legal advice. It is offered free for personal, non-commercial use.

The main source of information to keep up-to-date with developments in citizens' rights is our website <https://www.remaininfrance.fr/>

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