

What does Brexit mean for Europeans who are already resident in the UK?

A guide by North Star Law, Immigration Lawyer, Helen Smith.

While the UK and the rest of the world come to terms with the outcome of the UK's EU referendum, at least one thing is clear: the UK is still a part of the EU until we formally leave, but beyond that, the future is uncertain.

Around 2 million Europeans call the UK home and will rightly be concerned about their future in the UK. This is what we know so far about how Brexit might affect their immigration status:

In the short-term: Nothing changes overnight. The process of leaving the EU is likely to take at least 2 years and while the UK is still part of the EU, we are bound to apply the EU free movement rules. That means EEA nationals and their non-European family members can come to the UK and remain here as workers, students or self-sufficient people. Those who are here in one of those capacities for at least 5 years and have the documents to show it, obtain permanent residence by operation of law. They need permanent residence documents before they can apply to naturalise as British citizens.

In the medium term: I expect we will see a hardening of practices by the Home Office in response to the Leave vote. The government now have a clear political mandate to crack down on the numbers of EU nationals remaining in the UK, so they will make it more difficult for Europeans to obtain residence or permanent residence documents. We are seeing already an enormous backlog in the Home Office European section, with permanent residence applications taking more than the legal maximum of 6 months to be processed and I expect the Home Office to do all they can to make it more difficult for EEA nationals to obtain permanent residence document, as a way of coping with the enormous numbers of applications they receive.

In the long term: when the UK does leave the EU, free movement rights as they exist now are unlikely to apply. We might remain part of the EEA, in which case free movement would apply as it does now, but that would seem to defeat the political purpose of the vote to leave the EU, so is by no means certain. The UK will try to negotiate a deal with the EU that might include the free movement of some workers, but there won't be any clarity on the effect of any deal for many months, if not years.

A lot has been said about the 'vested rights' that Europeans who are already in the UK or UK nationals resident in other EU countries will enjoy. Some academics say vested rights will protect these people, but most reports I've seen say that's not clear and other academics point out that 'vested rights' are only meant to apply to states, not to individuals.

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What are the implications for employers?

Nothing has changed yet, so employers can continue to employ EEA national workers based solely on their nationality. They do not need to have a visa or a residence card in order to show they have the right to work in the UK. The only exception to this is for Croatians, who acceded relatively recently to the UK and to whom work restrictions still apply.

Family members of EEA nationals also continue to have the right to work in the UK, and they still need specific documentation to be able to show their employers that they enjoy this right.

When negotiations between the UK and the EU start, they will no doubt be centred around the dual pinch points of free trade and free movement of workers. Until the UK actually leaves the EU or negotiates a new deal with the EU, the current system will remain for EEA nationals.

In the meantime, we are expecting other changes that will affect the way the UK immigration system works, though. The Home Office is already swamped with applications from EEA nationals and their family members and is taking longer than normal to process their applications. Other parts of the Home Office will probably also be swamped as worried migrants take all available steps to secure their status in the UK, so we can expect rising processing times across the board. We can also anticipate a hardening of Home Office policy and practice, in the face of pressure to reduce net migration numbers.

Leaving the EU will bring with it the need to reform our domestic immigration system, which is structured around the premise that low-skilled workers can come from within the UK and that the 'resident labour market' includes EEA nationals. No announcements have been made yet, but the current points-based system cannot remain unchanged in the face of Brexit.

What can be done?

Swift action by Europeans who are resident in the UK could help to protect them against any changes that are to come. My suggestions would be:

- If EEA nationals have been resident in the UK for at least 5 years as either a worker, student or self-sufficient person, they can apply for a document showing they have permanent residence in the UK. They are eligible to apply for naturalisation as a British citizen after they have held permanent residence for at least 12 months. British citizens will retain the right to live and work in the UK once the UK exits from the EU, but it's important to remember that British citizens don't have the same freedom to bring their non-EEA national family members to the UK (see below).
- Children of EEA nationals who were born in the UK after their parents had acquired permanent residence, are British by birth and can apply straight for British passports. The Passport Office are becoming increasingly difficult to

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deal with and I would suggest anyone not sure of how to properly evidence that they have permanent residence should seek advice.

- If EEA nationals have non-EEA family members planning to relocate to the UK, that process should be started straight away, via a family permit application.
- Any EEA citizens or their family members who are currently in the UK and have been here for less than 5 years, should ensure they retain all official documents evidencing their residence and status in the UK. If they get to the 5 year mark before Brexit takes effect, they should be able to obtain permanent residence. If they won't reach that point before the UK leaves the EU, they should consider whether there are steps they can take now to prepare for alternative immigration options. They should be given the right to remain in the UK post-Brexit, but that is not at all clear at present as it depends upon the deal the UK manages to secure with the EU and who is left in charge of the UK once the dust settles.