



BRODIES^{LLP}

Brexit - Movement of people Q&A





I am an EU citizen, living in Britain and working for a British company.

Does the Brexit vote have any immediate impact on my right to work in the UK?

No. The UK is still a member of the EU for now. This means that EU citizens continue to enjoy the benefits of freedom of movement, including the right to work in another member state.

Will I be able to continue working in the UK post-Brexit?

Although the future position of EU citizens living and working in the UK is uncertain, it may be that, at the point of Brexit, there is some form of ‘amnesty’ for those already working here. The UK Government has said that it expects the legal status of EU citizens living in the UK to be protected once the UK leaves the EU but it is not yet certain this will be achieved.

Many ‘Leave’ campaigners advocated tighter controls on EU immigration, talking about a points-based system, and the Government has confirmed that the Cabinet’s position is that Brexit “must mean controls on the number of people who come to Britain from Europe”. It is possible, therefore, that EU nationals will not have an automatic right to remain in the UK, and this is especially likely to be the case for those arriving closest to the point of Brexit.



As a result of this uncertainty we recommend at this stage:

- if you wish to remain post-Brexit, consider possible options for securing your ongoing right to work in the UK (discussed below); and
- check whether your contract of employment requires you to inform your employer if your entitlement to work in the UK changes.

Can my employer dismiss me, or treat me differently to UK nationals?

In certain circumstances you could have a claim against your employer for discrimination if, because of your nationality, they:

- dismiss you, or select you for redundancy in preference to UK workers;
- refuse to consider you for promotion; or
- offer you less favourable terms than UK workers (such as reduced benefits or training opportunities).

In some circumstances, however, an employer may be able to treat you less favourably if the reason for doing so is your immigration status.

You may also have a claim for discriminatory harassment if you are subjected to racist comments.

What are my options for securing an ongoing right to work in the UK?

These will depend on your individual circumstances but might include:

Points-based system

Would you be entitled to remain in post if the current UK points-based system (currently applicable to non-EEA / Swiss nationals) is extended to EEA nationals after Brexit? There is no guarantee that this will happen, but it may be worth exploring. Under the present system:

- Employers need a sponsorship licence before employing non-EEA migrants: there are certain administrative requirements and a fee to be paid.
- Although skilled workers can gain entry if there is a shortage in a particular profession or sector, entry is currently closed to low-skilled workers: roles to be



filled by migrants must meet minimum criteria for skills and salary, and employers need to show there are no suitable UK workers who could perform the job.

- The Government intends to introduce an 'immigration skills charge' of £1,000 per migrant worker from April 2017 (with a reduced rate for smaller businesses).

Registration Certificate

If you have been in the UK for less than five years, you can apply for an EEA Registration Certificate. This document would not enhance your rights but may be useful proof of your status if freedom of movement is restricted in the future. It may also be useful evidence if you intend to apply for a document certifying permanent residence once you have been in the country for five years.

Permanent Residence

If you have been living in the UK for at least five years you may have acquired permanent residence. There are detailed rules, but generally permanent residence can be obtained if you have been a job-seeker, worker, self-employed, self-sufficient or a student during that time, and have not been absent from the UK for more than six months in any 12-month period.

If you meet the criteria, you will acquire permanent residence automatically, and don't have to complete any application process. However, it is possible to apply for a document certifying permanent residence – we would advise all EU nationals to make this application (and it is essential for those intending to apply for British citizenship).

Permanent residence is revoked if an EU national is absent from the UK for two years or more.

There is a question mark over whether EU citizens with permanent residence will be entitled to remain in the UK post-Brexit: as permanent residence rights come from European law, it is possible that these could be revoked post-Brexit. Although Government indications to date are that this is unlikely, individuals with permanent residence may want to take further steps to protect their immigration status in the longer term.



British citizenship

This is discussed in detail below.

Should I apply for British citizenship?

British citizenship guarantees the right to live in the UK indefinitely and to hold a UK passport: this option offers the most security if you are planning to stay in the UK.

Many of the benefits of British citizenship are already enjoyed by EU nationals with permanent residence in the UK but there are some key benefits to citizenship:

- Permanent residence is revoked if an EU national is absent from the UK for two years or more. Citizenship is permanent and there are no restrictions on the amount of time that can be spent outside of the UK.
- Only British citizens are entitled to a British passport.
- There are very limited circumstances in which the Home Office may revoke an individual's British citizenship or permanent residence in the UK but, arguably, the criteria under which permanent residence can be revoked are broader and the threshold is lower.

However, some countries do not permit dual citizenship – if this applies to you, becoming a British citizen would mean relinquishing citizenship of your home country.

Applying for British citizenship could have tax and pensions consequences (as outlined below) and you should take specialist advice.



What are the criteria for British citizenship?

If you have lived in the UK for five years and held permanent residence status for at least 12 months, you can apply for British citizenship by naturalisation.

The eligibility criteria state that you must:

- not have been absent from the UK for more than 450 days in the five-year period, or more than 90 days in the year leading up to your application;
- be of good character;
- be proficient in the English language; and
- understand life in the UK;
- intend to remain in the UK; and
- possess a permanent residence certificate or card (which you must apply for).

If I apply for British citizenship, what tax implications might that have?

Before applying for British citizenship, in order to secure your right to live in the UK, you should consider the impact on your current domicile status for the purposes of UK personal taxes. Your domicile is distinct from your residence. Domicile is where your permanent home is. Many factors would be taken into account in determining your domicile, and having British citizenship may be one such factor. Applying for British citizenship may prejudice your non-UK domicile status as being evidence of your intention to reside here permanently.

If you become UK domiciled then your worldwide income, worldwide gains and your worldwide estate on death would be subject to the UK tax regime, subject to any double taxation treaty which may apply.

You should also consider what implications there may be in your country of origin and the taxes applied there if you become UK domiciled.

What about my family, what are the options for securing their right to remain in the UK?

The options available will depend on the nationality of your family members, their relationship to you and how long they have been in the UK.



For example, if you have acquired permanent residence by working in the UK for five years (as described above) and your spouse or civil partner is not an EEA national but has lived with you throughout that five-year period, they may also have acquired permanent residence.

As explained above, British citizenship offers the most security for those planning to stay in the UK: your family members may want to explore their eligibility for this.

If I lose my right to work in the UK, will my employer be able to dismiss me?

If, ultimately, you lose your right to work in the UK, your employer will have a fair reason for dismissing you.

However, if you have at least two years' continuous service with your employer, you could still have a claim for unfair dismissal if they don't follow a fair procedure and act fairly and reasonably overall in dismissing you.



I am a UK citizen who lives in Spain and works for a Spanish company.

What impact will Brexit have on my right to work in Spain?

Although there is no immediate change to your right to work in another EU country, depending on the outcome of Brexit negotiations, your current free movement rights might not continue post-Brexit.

At this stage, you should obtain advice on:

- the current immigration rules for non-EEA nationals in Spain - how would you be impacted if these rules were extended to UK citizens in the future?
- Are there any steps your employer could take now to prepare for this possibility?; and
- The options available to you to protect your right to continue working in Spain, such as applying for Spanish citizenship. Consider the pros and cons of such a step.

I am a UK pensioner living in Spain.

Will Brexit affect the state pension paid to me by the UK Government?

If the UK remains within the EEA then it is unlikely that there will be any change to your state pension and you should continue to receive annual increases in payment. Although the UK Government pays state pensions to those who are eligible for them wherever they live in the world, recipients of a UK state pension currently only receive annual increases in payment if they live in the EEA, Gibraltar, Switzerland or a country

with a reciprocal social security agreement which provides for this.

I own property in Spain, what impact will Brexit have on my legal ownership rights?

Brexit is not expected to have any impact on property ownership rights on your property in Spain. Many non-EU nationals buy and own property in Spain and enjoy legal ownership rights. There may be other things to think about, though, such as access to healthcare in Spain (which may be relevant both to you and as part of the overall attractiveness of the property to an expat market) and possible changes to available terms for any mortgage (where an increased cost may apply to non-EU borrowers).

You should also think about what would happen to the property on your death. Spanish law will have a bearing to what happens to the property at that time, with a share having to go to any children and potential additional tax costs as a result, unless you leave a will making it clear that UK law is to apply and how you want the property to be dealt with. Again these may well not change on Brexit but we recommend you review the position as the detail becomes clearer.

I'm a British national thinking of buying a holiday home in France.

Should I hold off buying the property until Brexit?

Much depends on the detail of how Brexit is implemented and of any new agreements made between the UK and France but it is perhaps unlikely that there will be a direct impact on the purchase itself.

There are a number of other factors that you would be wise to consider though such as access to healthcare





and mortgage costs, as mentioned above. The position on death also needs to be considered as French inheritance law would apply, with the property passing to children subject to a surviving spouse being entitled to live there for life, unless you leave a will making it clear that relevant UK law is to apply and how you want the property to be dealt with. As with the question above on Spanish property ownership, these factors may well not change on Brexit but we recommend you review the position as the detail becomes clearer.



I'm an EU national living outside of the UK, and have been offered a job in the UK.

If I take the job what impact will Brexit have on my right to work in the UK?

It is unclear how long the Brexit process will take, but it is unlikely that you will have been in the UK long enough to obtain British citizenship or permanent residence by the point of Brexit. As such, your right to work in the UK post-Brexit will depend on the outcome of the Brexit negotiations and in particular:

- whether there will be an amnesty for EU nationals already working here;
- whether there be a cut-off point meaning, for example, that EU nationals arriving between the date of the referendum and Brexit will not have an automatic right to remain; and
- whether the current UK points-based system

(applicable to non-EU nationals) be extended to EU nationals? Some of the implications of this are discussed above.

If you decide to come and work in the UK, we would recommend that you apply for an EEA Registration Certificate. This document would not enhance your rights but may be useful proof of your status if freedom of movement is restricted in the future. It may also be useful evidence if you intend to apply for a document certifying permanent residence once you have been in the country for five years.

As regards any offer of employment in the UK, be aware that you could (in some circumstances) have a discrimination claim if, because of your nationality, your prospective employer offers you less favourable terms than UK workers, for example by offering you a fixed-term contract (where UK workers are employed on a permanent basis) or having shorter notice provisions in your contract.

Top ranked in the independent legal directories for EU & Competition Law, Administrative & Public Law and Parliamentary & Public Affairs

Brodies Brexit Advisory Group

Our Brexit Advisory Group is led by our constitutional law experts, supporting sector specialists who can provide pragmatic and informed advice on all of the issues raised by Brexit – helping you to plan for and implement any necessary changes to your business or organisation.



Christine O'Neill
PARTNER & CHAIRMAN
Head of Brodies Brexit
Advisory Group
+44 (0)131 656 0286
christine.oneill@brodies.com



Charles Livingstone
PARTNER
Constitutional issues and trade
+44 (0)141 248 4672
charles.livingstone@brodies.com



William McIntosh
PARTNER
Corporate structures, funds
and financial services
+44 (0)131 656 0154
william.mcintosh@brodies.com



Karen Fountain
PARTNER
Corporate structures, funds
and financial services
+44 (0)131 656 0179
karen.fountain@brodies.com



James Roscoe
PARTNER
Real estate
+44 (0)131 656 3742
james.roscoe@brodies.com



Grant Campbell
PARTNER
Data protection and
commercial contracts
+44 (0)131 656 0115
grant.campbell@brodies.com



Isobel d'Inverno
PARTNER
Business tax
+44 (0)131 656 0122
isobel.dinverno@brodies.com



Tony Hadden
PARTNER
Immigration and employment
+44 (0)131 656 0290
tony.hadden@brodies.com



Mark Stewart
PARTNER
Personal taxation, wealth
and residence
+44 (0)1224 392 282
mark.stewart@brodies.com



Bruce Stephen
PARTNER
Banking
+44 (0)131 656 0260
bruce.stephen@brodies.com



Gill Grassie
PARTNER
Intellectual property
+44 (0)131 656 3710
gill.grassie@brodies.com



Clive Phillips
PARTNER
Agriculture and farming
+44 (0)1224 392 281
clive.phillips@brodies.com



Gill Summers
PARTNER
Fisheries
+44 (0)1224 392 268
gill.summers@brodies.com



Alan Eccles
PARTNER
Charities
+44 (0)141 245 6255
alan.eccles@brodies.com



Brenda Scott
PARTNER
Universities and research
+44 (0)131 656 0226
brenda.scott@brodies.com



Joan Cradden
PARTNER
Pan-EU legal services
and connections
+44 (0)131 656 0130
joan.cradden@brodies.com



Roger Cotton
PARTNER
Projects, procurement
and state aid
+44 (0)131 656 0129
roger.cotton@brodies.com



Kirsty Macpherson
PARTNER
Renewable energy
+44 (0)131 656 0175
kirsty.macpherson@brodies.com



Stephen Goldie
PARTNER
Litigation
+44 (0)141 245 6226
stephen.goldie@brodies.com



Rhona McFarlane
MANAGING ASSOCIATE
Oil & gas
+44 (0)1224 392 273
rhona.mcfarlane@brodies.com