



What does Brexit mean for UK immigration?

Concerns about increasing migration to the UK seems to have been one of the main reasons why many people voted to leave the European Union (EU). However, the extent to which immigration and the free movement of people will be affected by Brexit remains very unclear and largely depends upon the model which the British Government decides to pursue when negotiating the UK's exit from the EU. It is worth noting that, unless otherwise agreed with the EU, leaving the EU will also mean leaving the European Economic Area (EEA).

What is the current position?

At present, nationals from the other 27 EU member states, together with nationals from Switzerland and from the three EEA states who are not members of the EU (Norway, Iceland and Lichtenstein) are able to move to the UK for an initial period of three months. British nationals are free to move to the other EEA member states. It is estimated that there are around 3 million EEA nationals living in the UK and these EEA nationals are able to work in the UK without restriction, as are their family members. Figures suggest that since the Brexit vote, immigration to the UK from the EU has decreased.

However, in order to remain in the UK for more than 3 months, EEA nationals must be in employed work or undertaking self-employed activities or self-sufficient or, in certain circumstances, they may be jobseekers or students.

After 5 years in the UK, EEA nationals may automatically qualify for permanent residence and 12 months later they are often able to apply for naturalisation as a British citizen.

Family members of EEA nationals are able to accompany their relatives to the UK irrespective of the nationality of that family member and, after 5 years, they may obtain permanent residence too.

What will happen to EEA nationals and their family members who are already in the UK?

Nothing will change overnight. The UK is still a member of the EU and in all likelihood will remain a member of the EU for at least another two years. EEA nationals and their family

members who are already in the UK and those who come to the UK in the near future will continue to have the right of free movement and the right to work in the UK whilst the UK remains a member of the EU.

What happens in relation to EEA immigration post Brexit will very much depend on the model of trade relationships which the UK decides to adopt and how exit negotiations with the EU proceed. If the UK wishes to retain close trade relationships with the EU/EEA and to adopt the Norwegian or Swiss model then it is likely that this will only be acceptable to the other EEA member states if the UK continues to allow free movement. Norway, Iceland, Lichtenstein and Switzerland have all had to agree to free movement of people even though they are not members of the EU. It seems increasingly unlikely that the UK Government will agree this.

The UK may try to negotiate close trade relationships with EEA member states without agreeing to freedom of movement or may try to negotiate reduced free movement (e.g. by agreeing a cap on the number of EEA migrants who may move to the UK or by only allowing those with job offers to come to the UK) but at this stage this seems relatively unlikely.

If the UK Government decides to opt for a looser trade relationship with Europe and to adopt a model more akin to the World Trade Organisation model, the UK will have the freedom to make its own immigration laws in relation to EEA nationals. One possibility would be an extension of the current Points Based System, which at present only applies to non-EEA nationals. Under this system, skilled workers who have a job offer from an employer which is a licensed sponsor are able to come to the UK to work if the employer pays the minimum salary set by the Government for that role and the employer is satisfied that there are no EEA nationals suitable for the role. This means that under the current system, if there are two candidates who are suitable for a role, the employer must in many cases offer the role to the EEA national rather than the non-EEA national. Under the current Points Based System, the migrant must be coming to the UK to undertake a professional or managerial role and there is virtually no scope for migrants to come to the UK to undertake low skilled roles. There are also currently immigration routes for investors, entrepreneurs and students to come to the UK but the requirements are often onerous.

Given the extent to which immigration has been a driving force behind the success of the Leave campaign and the strong views from many of the public, it is likely that any changes to EEA immigration will also be an opportunity for the Government to revisit the current Points Based System. The wishes of UK companies and those of the public will need to be carefully balanced.

Of the main issues to consider, one is that UK businesses will no doubt be concerned that, post Brexit, there may be insufficient people to undertake the many unskilled roles currently fulfilled by EEA nationals, especially in the agricultural, hospitality, catering and healthcare sectors. Therefore, ironically, the Points Based System would most likely need to be extended to allow a certain number of migrants from inside and outside of the EEA to come to the UK to undertake low skilled jobs.

What should EEA nationals do in the meantime?

EEA nationals may wish to apply for an EEA Registration Certificate now in order to be able to evidence that they are in the UK exercising the right of freedom of movement. Their non-EEA family members may wish to apply for a Residence Card too. This may be useful if transitional rules are implemented to allow EEA nationals and their family members who are already in the UK to remain here post Brexit.

EEA nationals and their family members who have been in the UK for at least 5 years should also consider whether to apply for Permanent Residence and then naturalisation as a British citizen within the next two years in order to ensure that they have the right to remain here in the event that freedom of movement for EEA citizens ceases when the UK leaves the EU. Consideration should also be given to how this would affect the individual's tax status and also whether there is any disadvantage to applying for naturalisation as a British citizen and ultimately becoming a British citizen.

If you have any questions on these or any other issues relating to immigration and Brexit, do please contact Kerry Garcia, Partner and Head of Immigration, who will be happy to discuss.



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