

Many of our clients have already been approached by valued but anxious EEA national employees in the UK seeking reassurance and clarity about what the Brexit vote means for them. Early signs are that rights of free movement will be a key lever in any exit negotiations and, therefore, it is unlikely that any definitive, agreed position on them will be reached (if at all) until at or close to the end of the UK's two-year exit window.

Such continued uncertainty will inevitably lead to second thoughts among your staff about whether their own best interests are served by remaining in the UK at this very difficult time. In the hope that they can answer your employees' most immediate questions on this score, here are our thoughts on the issues facing your EEA national employees.

- If they have been in the UK for five years in a qualifying status (e.g. as a student, worker, or self-sufficient or self-employed person), then they will have acquired permanent residence. This means that they have the right to live permanently in the UK regardless of whether they continue to reside here in a qualifying status.
- EEA national employees are not required to apply for a document certifying permanent residence in order to acquire that status, but for practical purposes they can and should do so as proof of it. It is also a sensible precaution where employees are not sure whether they have acquired permanent residence (for example, where there have been gaps in UK residence, employment or self-employment). Non-EEA national family members of EEA nationals in a qualifying status will also acquire permanent residence after five years' continuous residence and can apply for a permanent residence card at the same time as their family member or in their own right.
- The application process is lengthy. The relevant regulations provide for it to be processed within a full six months. While applications are currently generally processed within four to six months, the inevitable spike in applications over coming weeks is likely to tax that six month commitment severely. There is no fast-track service available for this process.
- Be aware that the UK Visas & Immigration application form for a certificate of permanent residence runs to some 85 pages. This is less daunting than it sounds, though the questions asked are quite intrusive, the requirements for accompanying evidence can be onerous and a failure to complete it accurately may require the process to be restarted.

The application form is available from the [UK Visas & Immigration website](#). Absences from the UK or gaps in employment of up to six months in any 12-month period do not necessarily disqualify a person from acquiring permanent residence (in certain circumstances, including maternity leave, longer gaps are also acceptable). Further advice should be sought where your employee's work history or residence in the UK has material gaps.

- In addition, it is mandatory to submit the employee's original passport or national identity card as part of the application. The employee should be prepared to be grounded for at least an initial three-week period (this too may stretch if the growth in applications is not matched by a growth in resources).
- EEA national employees who have held permanent residence for one year can apply to naturalise as a British citizen. This carries separate qualifying criteria, including stricter continuous residence requirements. They should check first whether their home country will allow dual nationality – some do, but others do not, and a successful application for British citizenship could, therefore, cause them to forfeit their nationality of origin.
- There is no current steer on the position of EEA nationals and their family members who have lawfully been in the UK for less than five years. However, it is in our view inevitable that post-Brexit a way will be found to regularise their status (perhaps through the creation of a new immigration category) so that they may lawfully remain resident and working in the UK, as now.

In the meantime, employees in this position can apply for a residence card confirming that they currently hold qualifying status in the UK.

- At some point, there will have to be a cut-off date after which this will not be the case for future hires from the EEA, but we think it wildly unlikely that this will be backdated to limit the rights of those already lawfully resident and working in the UK. The damage which any different approach would do to the British economy is surely too great to allow any other outcome.
- A fear that EEA nationals may at some future point have a more restricted immigration status is understandable, but nonetheless still no more than speculation. It will not, therefore, be a lawful basis for preferring a UK national over a better-qualified EEA candidate.

Additional Information

Please check our Brexit Legal blog: <http://www.brexitlegal.com>

We are setting up a series of client briefings to discuss the consequences of Brexit in more detail and will communicate relevant dates and details shortly. In the meantime if you have specific concerns arising from the Brexit vote or otherwise please contact your usual Squire Patton Boggs contact or any of the contacts listed.

If you have queries about the immigration consequences of the Brexit vote, please contact one of the lawyers listed in this alert.

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