The referendum result: what happens now?

The important thing to remember is that nothing will change immediately and the UK is still a member of the EU.

The referendum result informs but does not bind the Government. Article 50 of the Treaty on the European Union sets out the mechanism for leaving the EU and requires the UK to formally give notice of its intention to leave. The Government will then have a two year period in which to negotiate the terms of its exit.

What will this mean for staff who are EU citizens?

For now, EU citizens continue to enjoy the benefits of freedom of movement including the right to settle and work in another member state. EU citizens working in the UK can continue to live and work here until the UK formally leaves the EU.

What will change when the UK formally leaves the EU?

The Government has repeatedly stated that it is seeking to guarantee the legal status of EU citizens living in the UK after Brexit. The Prime Minister has recently reaffirmed this, you can read her full statement here. However, the future status of EU citizens remains the subject of negotiations between the UK Government and EU leaders.

Residents who have been here for more than 5 years

EU citizens who have lived in the UK continuously and lawfully for 5 years have a permanent right to reside in the UK (see below). That right comes from a European Directive and domestic regulations implementing it. It is very unlikely that rights already acquired under the current law would be taken away by future legislation because, although not binding on the UK Parliament constitutional convention, international legal obligations and the European Convention on Human Rights all mean that any attempt to do so could be challenged and would be politically difficult. That said the UK Parliament is sovereign and post Brexit it could legislate to repeal the right of permanent residence for EU nationals (even if highly unlikely). Given this complexity, EU citizens who have permanent residence rights may still want to consider whether they should take any further steps to protect their immigration status in the longer term.

EU nationals generally

After the UK leaves the EU, the right of freedom of movement currently enjoyed by workers from the EEA and Switzerland will however no longer be automatic. It is anticipated that transitional arrangements will be put in place granting EU citizens already in the UK the right to remain under UK immigration rules. It is unclear whether this permission will be granted on a temporary or permanent basis and to whom the transitional arrangements will apply (e.g. those present in the UK on the date of the referendum, those in the UK before it formally leaves the
EU or those who have already obtained permanent residence in the UK). As a result of this uncertainty, EU nationals who want to remain in the UK will want to consider whether there is anything they can do now to secure their status. Applying for a permanent residence card now may be helpful in the event that the UK Government decides that those who can prove permanent residence status at the point of Brexit will be entitled to continue to enter and remain in the UK free from immigration control.

4 What steps can EU citizens take to secure their immigration status in the UK?

There are a number of options available to EU citizens working in the UK who want to take steps to secure their immigration status. The options available depend on how long the member of staff has been in the UK.

4.1 Permanent Residence

Permanent residence (also known as indefinite leave to remain) provides a right to live in the UK indefinitely.

Individuals who have been living in the UK for at least 5 years and have been a ‘qualified person’ for the duration of this period (i.e. have been employed, self-sufficient, a job seeker or studying) may have acquired permanent residence in the UK (also known as indefinite leave to remain). To qualify, the individual must not have been absent from the UK for more than 6 months in any 12 month period. Where there has been an absence of more than 6 months then it may be disregarded (provided it is still less than 12 months) where the absence has been on account of an important life event. There is not an exhaustive list of examples of important life events for these purposes but they will include absences for reasons of child birth and pregnancy, serious illness, and overseas postings (for example a visiting professorship) and other events of a similar nature.

Permanent residence is acquired by virtue of meeting the qualifying criteria alone and no application process is involved. It is however possible to apply for a document certifying permanent residence which would be advisable for all EU nationals and particularly those who may consider applying for British citizenship in the future. This can be done either by completing the relevant paper application form or, more easily on-line (https://visas-immigration.service.gov.uk/product/eea-pr). When making an application you will need to be able to provide evidence of your 5 years’ continuous residence in the UK. Documentary evidence will need to be spread over the whole 5 year period and the Home Office guidance recommends at least two documents for each year of residence. Documents which the Home Office will accept include: letters from government departments such as HMRC, letters from the NHS or your GP, bank statements, utility bills and mortgage or tenancy agreements. The Home Office guidance also directs that you should be able provide a record of travel documents which account for any periods you’ve spent outside of the UK in the past 5 years. If you intend to apply for either a permanent residence
care or an EEA Registration Certificate (see below) in the future, it would be advisable to start keeping a record now of periods spent outside of the UK.

There has recently been a number of stories in the press where EU nationals have had applications for permanent residence certificates rejected and have then received a standard letter from the Home Office instructing them to “make arrangements to leave” the UK. In these cases the rejection often appears to have been down to a minor technical point such as providing a photocopy of a passport rather than the original. Obviously the full factual circumstances of each individual’s case will differ, but the Home Office has confirmed that the instruction to prepare to leave the UK contained in these rejection letters is standard wording and they have agreed to review the wording in the light of concerns raised and update it accordingly. If you receive such a letter this shouldn’t necessarily be interpreted as meaning that you need to leave the UK. As noted above, your right of permanent residence is granted by virtue of meeting the qualifying criteria and is separate to the process of applying for a certificate. If you are submitting an application for permanent residence or are concerned about the process you should seek the advice of an immigration specialist.

4.2 Permanent residence: Qualifying Activities

4.2.1 Qualifying as self-sufficient for the purposes of permanent residency

To qualify as self-sufficient, the individual must provide evidence of financial resources and of comprehensive sickness insurance covering the entire period for which they are claiming permanent residence (at least the last 5 years).

Sufficient financial resources are not universally defined, but the individual must be able to prove that they have sufficient resources to prevent themselves and their family from needing to claim state benefits. Acceptable evidence for this could be: bank statements showing savings, bank statements showing no negative balances, evidence of pension payments, receipt of educational grants from overseas, or income of a partner or family member to which they have regular access. The individual’s financial commitments will also be taken into account, such as: rent, mortgage, utilities, loans, credit cards or other personal debt. The individual can alternatively provide evidence that their circumstances are about to change, for example: receiving inheritance (a solicitor’s letter confirming when this is to be received), potential employment (a letter confirming an offer of a job) or receiving pension payments (a letter from the pension company confirming when it is to be paid).

Comprehensive sickness insurance must cover the majority of medical treatment the individual may receive in the UK. The individual can provide evidence for this in the form of: a cover document from their private insurance provider, a European Health Insurance Card (EHIC) which was valid for the last 5 years, or an S1/S2/S3 form (or an equivalent previous version). If the individual has accessed the NHS during their time of permanent residency, this will have
no negative effect on their application as long as they can still provide the necessary evidence of comprehensive sickness insurance.

### 4.2.2 Qualifying as a job-seeker for the purposes of permanent residence

To qualify as a job-seeker, the individual is required to indicate whether they have been a job-seeker for their entire period as a permanent resident in the UK, or whether they were previously employed, self-sufficient or studying (in which case they must provide evidence for this).

If the individual has been a job-seeker for the entire period, they need to give the date they entered the UK, the date they began searching for work, and are required to briefly describe their efforts made to find work and their relevant qualifications which will help them to find work in the UK.

All current job-seekers must then demonstrate that they have been actively looking for work in the UK. Some examples given by the Home Office for this are: proof of receipt of job-seeking benefits; letters of invite to interviews; rejection letters from employers; evidence of academic, vocational or professional qualifications or training undertaken to improve their chances of finding work; registration as a jobseeker with Jobcentre Plus; or proof of registration with a recruitment agency.

### 4.2.3 Listing more than one qualified activity

Individuals can provide evidence that they have qualified for permanent residency in different ways during their time in the UK, by filling in section 9A(1) of the relevant application form accordingly.

For example, an individual could show that they were a student for the first two years, and then employed for the remaining time after a short period of job-seeking. This requires the individual to list the dates of each period, and to provide sufficient evidence for each period to prove each qualification.

### 4.3 British Citizenship

British citizenship guarantees the right to live in the UK indefinitely and to hold a UK passport.

Once an EU citizen has lived in the UK for 5 years and has held permanent residence status for at least 12 months, it is possible to apply for British citizenship by naturalisation. To apply, an individual must not have been absent from the UK for more than 450 days in the 5 year period or more than 90 days in the year leading up to their application.
There are a number of eligibility criteria placed on those who wish to become a British citizen. The criteria include being able to demonstrate the following:

- Good character;
- English language proficiency;
- Understanding of life in the UK;
- Intention to remain in the UK; and
- Possession of a permanent residence certificate or card (which must be applied for).

Becoming naturalised as a citizen does offer the most security for those planning to stay in the UK. However, applicants must be aware that some countries do not permit dual citizenship. For members of staff from these countries, becoming a British citizen would mean that they would be required to relinquish citizenship of their home country. This could have tax and pensions consequences and so specialist advice should be taken and carefully considered.

4.3.1 **British citizenship: Application process**

**What level of qualification do I need to have completed in English to be exempt from carrying out the English language test?**

Those applying for British citizenship must have a “relevant English language qualification”, apart from nationals from the Republic of Ireland who are exempt. A list of approved tests and approved test centres can be found [here](#), in Scotland there are test centres in both Edinburgh and Glasgow. High school level qualifications such as Standard Grades, Intermediates and National Vocational Qualifications are not recognised.

You can also prove your knowledge of English by holding a degree which was taught or researched in English. If you hold a degree from a UK university, your original degree certificate will be sufficient evidence.

If your degree was not awarded by a UK university you will need other evidence including your degree certificate, a letter for the UK National Academic Recognition Information Centre confirming the equivalent level of your degree and a letter from the awarding university confirming the degree was taught or researched in a majority English-speaking country.

**What does the Life in the UK test involve?**

The Life in the UK Test consists of 24 multiple choice questions on British culture and customs. You can sit the test at one of the 60 test centres across the UK. You must book your place online at least 3 days in advance. The test costs £50.
Applicants may find it helpful to purchase the ‘Official Handbook for the Life in the UK Test’ which covers the range of topics that will be included in the test. This can be purchased via a link on the www.gov.uk website for £12.99.

You must bring one form of ID and a separate proof of address to the test centre.

To pass the test, you must achieve a score of at least 75%. You will then be provided with a ‘pass notification letter’. If you do not pass the test, you must wait 7 days before booking it again. You only need to sit the test once.

4.4 Registration Certificate

If a member of staff has been in the UK for less than 5 years, they may wish to apply for an EEA Registration Certificate. This document does not enhance the rights of EU citizens but may be a useful proof of status if restrictions are placed on freedom of movement in the future. It may also be useful evidence for those wishing to apply for a document certifying permanent residence after they have been in the country for 5 years.

5 What are the benefits of becoming a UK citizen?

Many of the benefits of becoming naturalised as a UK citizen are already enjoyed by EU nationals with permanent residence in the UK. There are however a couple of key differences which should be considered by those who may be eligible to apply for citizenship. These are:

- **Residence requirements** – Permanent residence is revoked if an EU national is absent from the UK for 2 years or more. Citizenship is permanent and there are no restrictions on the amount of time that can be spent outside of the UK.

- **British passport** – Only British citizens are entitled to a British passport.

- **Ability to revoke status** – There are very limited circumstances in which the Home Office may revoke an individual’s British citizenship or permanent residence in the UK. Arguably the criteria under which permanent residence can be revoked are broader and the threshold is lower.

  (1) Citizenship may only be revoked if it is conducive to the “public good to do so”, the individual has conducted themselves in a manner which is “seriously prejudicial” to the vital interests of the UK; or they have obtained their citizenship through fraud or misrepresentation. The likelihood of the individual being left stateless must also be taken into account when deciding if their citizenship should be revoked.
(2) Permanent residence may be revoked if it is in the interests of public policy, public security or public health to do so.

6 What options are available to family members of staff who are EU nationals?

6.1 Members of staff who are EU nationals (or whose family members are EU nationals) will understandably want to take steps to secure their family's right to stay in the UK. The range of options available will depend on the family member's nationality, their relationship to the employee and how long they have been in the UK.

6.2 For the purposes of UK immigration laws, family members are defined as:

- spouse or civil partner
- child or grandchild who is under 21 or a dependent
- spouse or civil partner's child or grandchild who is under 21 or a dependent
- their (or their spouse or civil partner's) dependent parent or grandparent.

6.3 Both EEA and non-EEA nationals will in most case acquire permanent residence if:

- they have been living in the UK for 5 years;
- they have lived with their family member, who is an EEA national, for the duration of this period;
- their family member has been a 'qualified person' (i.e. they have been employed, self-sufficient, a job seeker or studying) during this period.

6.4 Extended family members (including unmarried partners, aunts, uncles, siblings) who have been living in the UK for 5 years may also acquire permanent residence if they have held an 'EEA family permit' for the duration of this period.

6.5 Once a family member or an extended family member has held permanent residence in the UK for at least 12 months, they can apply to become naturalised as a British citizen. It will be necessary to present a document certifying permanent residence when making this application.
What is the position of children born in the UK to EU nationals?

The position of children born in the UK to an EU national parent depends on the date on which they were born and the status of their EU national parent.

A child born in the UK with at least one parent who is an EU national will automatically become a British citizen at birth if the following criteria are met:

- The child was born before 2 October 2000 and their parent was exercising an EC Treaty right in the UK at the time of birth;
- The child was born between 2 October 2000 and 20 April 2006 and their parent had indefinite leave to remain in the UK (or permanent residency) at the time of birth;
- The child was born after 30 April 2006 and their parent either had indefinite leave to remain in the UK at the time of birth or they had been exercising EC Treaty rights for 5 years or more.

Children who do not automatically become British citizens at birth may become eligible to register as a British citizen at a later date. Registration is a simpler and slightly less expensive process (costing around £936 per application) than making a full application to naturalise as a British citizen.

It will become possible for a child to register as a British citizen if their parent obtains indefinite leave to remain (or permanent residency) after their birth. As an example, a child is born in 2007 but at this point their parent has only been in the UK for 3 years. In 2009, the child's parent has been in the UK for 5 years and obtains permanent residency. The child is then eligible to register as a British citizen.

A child who was born in the UK and has spent the first ten years of his or her life here may register as a British citizen. This right exists even if the child’s parent(s) do not have indefinite leave to remain.

What is the position of unmarried partners?

Non EU unmarried partners of EU nationals fall within the definition of 'extended family members' for the purposes of UK immigration laws. This means that the individual must acquire an EEA Family Permit to be able to benefit from their partner’s status in the UK. Once an individual holds an EEA Family Permit, they will start acquiring rights (i.e. permanent residence) as if they were the spouse of the EU national.
To be issued with an EEA Family Permit, the individual must show that they have been living with their EU national partner in a relationship similar to marriage for a minimum of 2 years. Unmarried partners must provide the following evidence to demonstrate their durable relationship:

- Proof that any previous relationships have permanently broken down (i.e. decree absolute for marriages or dissolution order for a civil partnership);
- Evidence of cohabitation for at least 2 years (this could include rental agreements, mortgage statements, joint bank statements and official correspondence linking the couple to the same address);
- Evidence of any joint finances, joint business ventures and investments (i.e. tax returns, business contracts, investments);
- Evidence of joint responsibility for any children (i.e. birth certificates, custody agreement);
- Photographs of the couple;
- Other evidence demonstrating the couple’s commitment and relationship.

9 What is the position of Irish nationals?

Irish nationals may not find that their position changes at all as a result of Brexit. Both the Irish and UK governments have expressed an intention to maintain the benefits of the Common Travel Area (CTA) during the negotiations which are to come.

The CTA grants certain privileges to Irish nationals living in the UK whereby they are considered ‘non-foreign’ for legal purposes: immigration controls do not apply; they can participate in UK elections and referenda; they can apply for British citizenship after 5 years of residence in the UK; and their children born in the UK can do the same. Both governments concerned have indicated that this is unlikely to change.

Therefore, it is not yet (if ever) necessary for Irish nationals to take any action. However, if individuals are interested in guaranteeing that their rights will not change, they may wish to apply for British citizenship. Irish nationals can apply for British citizenship after living in the UK for 5 years. As both countries allow dual-citizenship, this would not negatively affect the rights of Irish nationals. Acquiring British citizenship could however have unexpected consequences which should be considered before making an application e.g. tax.
Do I need to send my passport when making an application for a permanent residence card or citizenship?

If individuals need their passport for travel purposes, and do not wish to send it with their application for a permanent resident card, the following options are available to them:

1) Individuals can instead provide a European Economic Area (EEA) national identity card. These can be issued by all EEA member countries, with the exception of the UK, Denmark, Iceland and Norway.

2) Individuals can request the return of their passport, 2 months after submitting their application. This usually takes up to 10 days, however individuals can request that their application be fast-tracked for a fee of £400.

3) Individuals can submit both their passport, and a copy of their passport which has been certified as a true copy by a solicitor. Once receipt of their application is acknowledged by the Home Office, the individual can request that their passport is returned.

4) Individuals can use the Home Office European Passport Return Service. This allows EEA nationals to keep their passports while their online application is being processed. At present the only location in Scotland where this is available is at the Glasgow Premium Service Centre.