

# Brexit: Immigration Update

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Firm General and Europe

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The British Prime Minister, Theresa May, has now confirmed the government's view that the United Kingdom must leave the European single market in order to give effect to the outcome of the EU referendum held on June 23, 2016. In light of that statement, the UK government's promise to guarantee the status of EEA nationals already residing in the UK as soon as possible after commencement of negotiations will provide little comfort to those affected. Prime Minister May made it clear that UK rights and protections will depend on UK nationals residing in other Member States receiving the same rights and protections, which may take months, even years, to agree.

Employers should therefore expect uncertainty around the future immigration status of EEA nationals in the UK (and UK nationals in the EEA) to continue for some time, while the government negotiates these issues with its European counterparts. Even if transitional arrangements are put in place to ensure EEA nationals working in the UK and UK nationals working in the EEA will continue to be able to do so, EEA nationals and their dependents should start taking steps to formalize their status. Many employers have already started offering assistance in this regard.

## **How Might EEA Nationals in the UK Formalize Their Status?**

EEA nationals and their dependents should first consider whether they are already eligible to apply for a permanent residence card based on five years of lawful and continuous residence in the UK. If such individuals can also show that the qualifying five-year period ended at least one year ago, they may even apply for naturalization once they have received their permanent residence card.

EEA nationals who are not yet eligible for permanent residence might apply for a registration certificate evidencing that they (and, if applicable, their dependents) are exercising an extended right of residence in the UK. They should ensure that they continue to retain sufficient evidence that they are exercising their EU treaty rights to live and work in the UK (for example, by retaining copies of utility bills and pay slips evidencing the time they have been in the UK). However, it is this sub-group of EEA employees that is most at risk, and about whom employers will therefore be most concerned.

## **Employee Audits and Staffing Considerations**

Whilst employers with UK operations will want to start auditing the immigration status of their workforce in the UK and Europe (if they have not already done so), in order to identify who may be affected if and when the current immigration rules do change, it is important to do so in a lawful manner. Employers should take care to refrain from making recruitment/staffing decisions based on nationality, in order to avoid falling foul of current UK and European anti-discrimination

laws, which protect employees and job candidates from less favorable treatment on grounds of their national origin. Fortunately, the UK government has distanced itself from a proposal made by the current Immigration Minister, Robert Goodwill, for a £1,000-a-year levy on “every EU skilled worker recruited by British employers after Brexit,” given the potential such a statement has to influence the recruitment practices of UK businesses.

In addition, employers with operations in Europe and employees from both the UK and other EEA countries might also consider reviewing any pending expatriate arrangements, in order to anticipate potential problems in future (particularly in light of the Home Secretary’s suggestion that, post-Brexit, EU migrants could be required to hold work permits).

### **Covington’s Brexit Task Force**

Covington has formed a Brexit Task Force staffed by senior lawyers and advisors linking its offices in London, Brussels, and Washington to monitor events and to keep clients apprised of legal, regulatory, and policy developments.

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