



# THE AIRE CENTRE

Advice on Individual Rights in Europe

## Information note on the UK referendum decision and its potential implications

---

*The AIRE Centre is a specialist legal charity. We use the power of European law to protect your human rights.*

On the 23rd June 2016 the UK voted to leave the European Union. The Prime Minister, David Cameron, has confirmed that in the light of this vote the UK will begin the process of preparing to negotiate the withdrawal of the UK from its membership of the EU. It remains unclear at this stage what will be the effects of the UK leaving the EU, as this is very much dependent on what the UK and EU are able to negotiate. However this information note aims to provide some general indications of some of the possible consequences.

### The Free Movement of EU citizens

The UK may wish to seek, through membership of EFTA, to participate in the EEA. This extends many of the rules on access to the EU internal market to the EFTA countries (so Switzerland is not in the EEA but is a member of EFTA). However it is possible that the UK might have to accept free movement, as a condition of participation in the European Economic Area (EEA) treaty. Also the EU and other EEA/EFTA parties would have to agree to any such requests.

Alternatively, the UK could seek to negotiate a 'standalone' treaty on free movement of people with the EU, as Switzerland has done, or a more limited agreement on migration between the UK and EU. The UK could alternatively seek to negotiate bilateral treaties on migration with individual Member States. However such agreements would likely fall foul of both the exclusive competence and shared competence rules of the EU and would be subject to a favourable opinion from the Court of Justice.

Any access of UK citizens to work or reside in the EU will likely be a 'mixed' agreement that requires ratification by all Member States and a national veto, since EU law reserves competence on the volumes of admission of non- EU economic migrants to Member States. As important, and more complex, are the social security regulations, not national welfare

**Advice Line: +44 20 7831 4276      Fax: +44 20 7404 7760**

**e-mail: [info@airecentre.org](mailto:info@airecentre.org)**

**Third Floor, 17 Red Lion Square, London WC1R 4QH**

Company Limited by Guarantee, Reg. No. 2824400 Charity Registered No. 1090336



Participatory Status

Member of  
**advice** UK  
The voice of independent advice



Organisation No.  
N200600055



# THE AIRE CENTRE

Advice on Individual Rights in Europe

benefits but social security benefits, including special non-contributory benefits, some of which apply to Third Country Nationals and some which don't.

## Process of withdrawal

The withdrawal process is set out in Article 50 of the Treaty on European Union ('TEU'). This is the only legal route to withdrawal under the current Treaties (although by default international law would acknowledge other unilateral routes, although these would be likely to have more disorderly consequences).

The UK has not yet officially notified the decision stating its intention to withdraw. This would be followed by the negotiation of a withdrawal agreement. Under Art 50(4) the UK would not be permitted to participate in the European Council discussions which lead to the withdrawal agreement. In principle the UK would be able leave the EU as soon as the agreement entered into force or two years after notification, unless the withdrawal treaty sets a different date or the UK and the EU agree unanimously to extend that date.

It is also likely that the CJEU would probably be asked to give its Opinion on any draft agreement reached before such an agreement could go forward. After withdrawal the UK would also no longer have standing before the CJEU in relation to any litigation about the way in which the agreement would be implemented from the EU side unless this was expressly included in the withdrawal agreement

The UK will, as a matter of EU law, remain bound by the whole of the EU "acquis" – that is the whole body of EU law - until such an agreement had been ratified by all EU member states. As a matter of domestic law the European Communities Act 1972 could be repealed whenever Parliament chose to do so but this repeal would not affect the UK's position in EU law.

It is also worth pointing out that the UK settlement agreed with the European Commission in February, including any restriction on benefits for EU nationals, has now ceased to exist as a result of the referendum result.

## Impact on UK citizens living in the EU and EU citizens living in the UK

All should be clear that currently UK and EEA nationals (including Swiss and Icelandic, Liechtenstein and Norwegian nationals who have free movement rights) are still entitled to live and work in another EEA country so long as they are a 'qualified person'. The term 'qualified

**Advice Line: +44 20 7831 4276      Fax: +44 20 7404 7760**

**e-mail: [info@airecentre.org](mailto:info@airecentre.org)**

**Third Floor, 17 Red Lion Square, London WC1R 4QH**

Company Limited by Guarantee, Reg. No. 2824400 Charity Registered No. 1090336



Participatory Status

Member of  
**advice** UK  
The voice of independent advice



Organisation No.  
N200600055



# THE AIRE CENTRE

Advice on Individual Rights in Europe

person' is defined by the Citizens' Directive and essentially requires the EEA national to be economically active in the host member state.

Just because the UK has voted to leave the EU, EEA nationals do not need to pack their bags and leave the UK immediately. The UK is still a member of the EU because the Article 50 procedure has not yet run its course. As a matter of UK law, the vote in the referendums is, in itself, not legally binding but purely advisory. As stated earlier in order for Brexit to happen, the UK must notify the European Council of its decision to withdraw from the EU. The UK then has two years to negotiate its exit from the EU, unless member states unanimously agree to extend the timetable.

This means that EEA nationals will continue to be able to live and work in the UK exercising their free movement rights until our withdrawal from the EU is effective. This is where the certainty ends; what happens after this period is anyone's guess.

Any withdrawal agreement may seek to cover the position of UK citizens living in the EU and EU citizens living in the UK. The key issues will be whether they will retain the residence rights and the status currently derived from EU law (status of family members, access to employment and benefits, equal treatment, grounds for expulsion) or will they be in the same position as other Third Country Nationals (TCNs) under national immigration law. There will also be a question of the future position of those EU citizens resident in the UK for instance if they marry a non-EU citizen in future, they retire from work or otherwise change their status, they enter university in future or they are not yet a "permanent resident" under EU law.

Article 70 of the Vienna Convention on the law of treaties refers to guaranteeing 'acquired rights' of individuals in the event of termination of a treaty. However since there has never been an Art 50 withdrawal from the EU this has never been applied in this context. Many observers think this may be of limited utility, because it is not clear how individuals could derive rights under such a treaty. Some minimal protection may stem from the ECHR, as in the *Kuric* case the Court indicated that where residents lose citizenship as the result of a secession process, at a minimum they should be offered secure alien residence status.

It is also unclear whether it applies to something like immigration status or whether it protects people who have already acquired permanent residence status as of 23rd June 2016. In cases where someone does not have acquired rights or are not covered by a treaty between the UK and the EU or its Member States, it would be for the UK to determine what rules it wished to

**Advice Line: +44 20 7831 4276      Fax: +44 20 7404 7760**

**e-mail: [info@airecentre.org](mailto:info@airecentre.org)**

**Third Floor, 17 Red Lion Square, London WC1R 4QH**

Company Limited by Guarantee, Reg. No. 2824400 Charity Registered No. 1090336



Participatory Status



Organisation No.  
N200600055



# THE AIRE CENTRE

Advice on Individual Rights in Europe

adopt as regards EU citizens in the UK. On the EU side, they would benefit from EU measures that apply to long term resident TCNs except in the cases of those countries that have opted out.

In the absence of a deal on free movement of people, UK citizens will no longer be fast-tracked when they cross the EU's external borders and EU citizens will not be fast-tracked when they visit the UK in return. UK citizens like other TCNs would still benefit from the Schengen arrangements for free movement within the Schengen space albeit only for 3 months. It seems relatively unlikely that the Schengen states would place the UK on the list of countries whose nationals require Schengen visas.

## What can EEA nationals do now?

EEA nationals worried about their future can take steps to try and mitigate against the possible effects of Brexit.

The first would be to consider applying for a residence card or a document certifying permanent residence in the UK. Neither of these documents are compulsory for an EEA national living and working in the UK as they simply confirm rights already held by the EEA national. But they are a simple way for an EEA national to prove that he/she was exercising his/her free movement rights in the UK before any UK withdrawal from the Union.

There is a lot of uncertainty about what will happen once the UK actually leaves the Union. There are likely to be transitional provisions protecting EEA nationals already living and working in the UK at the time the withdrawal takes place. What these will look like is difficult to predict as no country has ever left the EU. However Greenland left the European Community in 1985 after a national referendum. In that instance, transitional provisions were negotiated to allow EEA nationals living and working in Greenland to continue to benefit from free movement. Being able to evidence your position at the relevant time may therefore prove important.

The other option is for EEA nationals to consider naturalising as British citizens. There are various requirements for naturalisation, one of which is the applicant's length of residence in the UK. EEA nationals will have to prove that they have acquired permanent residence in the UK, which is achieved after five years' continuous residence in the UK as a qualified person. A further twelve months residence is then required before an application for naturalisation as a

**Advice Line: +44 20 7831 4276      Fax: +44 20 7404 7760**

**e-mail: [info@airecentre.org](mailto:info@airecentre.org)**

**Third Floor, 17 Red Lion Square, London WC1R 4QH**

Company Limited by Guarantee, Reg. No. 2824400 Charity Registered No. 1090336



Participatory Status

Member of  
**advice** UK  
The voice of independent advice



Organisation No.  
N200600055



# THE AIRE CENTRE

Advice on Individual Rights in Europe

British citizen can be contemplated (unless the EEA national is also married to a British citizen when different rules apply).

## Who to contact

If you continue to have concerns or wish to seek clarification on anything contained in this information note then you can contact us at [info@airecentre.org](mailto:info@airecentre.org) or by phone on **+44 (0) 20 7831 4276**

*If for any reason we cannot assist then we will refer or signpost you to another organisation that will be able to help.*

*The information in this note is accurate and up to date as of 01.07.2016*



Participatory Status

Advice Line: +44 20 7831 4276      Fax: +44 20 7404 7760  
e-mail: [info@airecentre.org](mailto:info@airecentre.org)  
Third Floor, 17 Red Lion Square, London WC1R 4QH  
Company Limited by Guarantee, Reg. No. 2824400 Charity Registered No. 1090336

Member of  
**advice** UK  
The voice of independent advice



Organisation No.  
N200600055