

EU Referendum: How Will a Leave Vote Affect British Nationals Living in the EU?



Few issues surrounding Britain's In/Out European Union referendum have ignited passions and captured headlines as consistently as immigration. As the June 23 polling date looms nearer, many 'Leave' supporters will no doubt be arguing that abandoning the EU is the only way for Britain to regain control over its borders, limit the number of EU migrants entering the country, and, arguably, protect jobs.

Regardless of the correctitude of that argument, there is another side to EU immigration, and the entire EU referendum, which has still to be properly addressed by either 'Remain' or 'Leave' campaigners: the fate of those British individuals who exercised their right of movement to live and work in the EU.

What Are the Current Freedom of Movement Rules?

Currently, under [Article 45 of the Treaty on the Functioning of the European Union](#), all EU citizens - regardless of country of origin - enjoy a wide range of benefits derived from the EU's freedom of movement rules. Including:

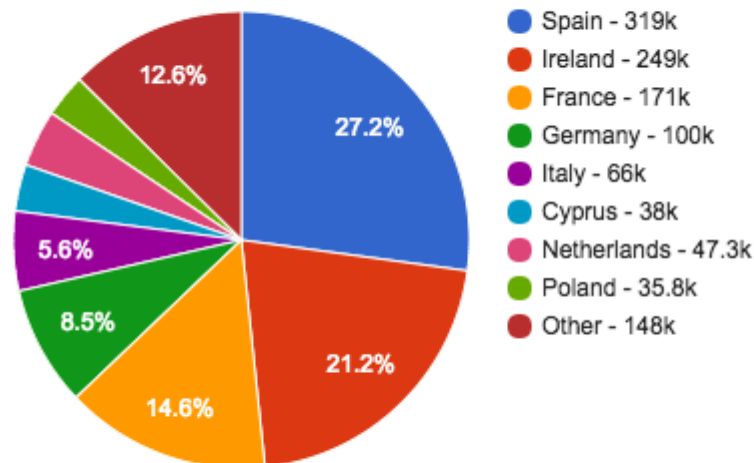
- Looking for a job in another EU country
- Working there without needing a work permit

- Residing there for that purpose
- Staying there even after employment has finished
- Enjoying equal treatment with nationals in access to employment, working conditions and all other social and tax advantages

In many cases, certain health, security and pension provisions are also transferred across when a citizen moves to a new member state.

According to the [House of Commons Migration Statistics Report](#), 1.2 million British nationals live in EU member states - a downward revision from the oft-quoted headline figure of 2.20 million. The top destinations for British migrants in the European Union are Spain (319,000), Ireland (249,000), France (171,000), and more recently Germany (100,000).

British Nationals Living in the EU



How Is the EU Referendum Likely to Affect British Nationals in the EU?

During a [Commons debate](#) on February 22nd, the Conservative MP for Thanet North, Sir Roger Gale, asked Prime Minister David Cameron if he could tell these British nationals what would happen if Britain did leave the EU. In response, Cameron stated:

“The short answer to my hon. Friend’s question is that I can tell those people what it will be like if we stay, but I cannot be absolutely certain about what would happen if we leave. It would depend on a complex and difficult negotiation, and I think there would be a lot of uncertainty.”

Currently, we know there would be a two year negotiating period if Britain did vote to leave the EU. However, [Lord O’Donnell](#), the cabinet secretary who advised three prime ministers between 2005 and 2011, is dubious as to whether such a complex process could be completed in this timeframe. He cited a Cabinet Paper which suggested the negotiating period could be closer to a decade.

I asked Sir Gale if, since his House of Commons statement, he had received any additional information. He claimed he had only been met with ‘vague’ responses from the government.

Despite the ambiguity surrounding the issue, there are some predictions that can be made in relation to British nationals in the EU, most notably regarding freedom of movement in the EU.

An End To Freedom of Movement for British Nationals?

If Britain votes to leave the European Union, and the Article 45 rights are revoked to citizens of other EU countries, it stands to reason that they will also be revoked for all British citizens - including potentially those currently living in the EU. Of course, this is a possibility which has many British citizens in the EU worried.

Therefore, British nationals currently living freely in the EU would likely be required to obtain residency and work visas, as well as be subject to various quotas and controls on migrants. The same would presumably apply to EU nationals in Britain.

Others, who have lived in their adopted country for long enough, could possibly go through the process of nationalization. However, in most cases this would require passing a language and citizenship test as well as forfeiting their British citizenship.

Alternatively, the UK could potentially negotiate bilateral agreements with individual EU states which resemble current freedom of movement laws - in particular with nations with large British communities, such as Spain and France. However, such agreements would likely be marred with complex issues, as well as controversy from

the wider European community. When I asked Sir Gale if he imagined the UK going down this route, he replied: "Possibly but unlikely."

The potential end of freedom of movement and work has also had an impact on EU citizens in the UK. For example, according to [The Independant](#), a publisher of citizenship test textbooks, Red Squirrel Publishing, have seen a 300% increase in sales following the announcement of the EU referendum.

A Freezing of Pensions?

Another benefit of the Article 45 freedom of movement rules concerns the currently transferable nature of certain pension and security provisions. This would also be affected by a potential 'Brexit'. Sir Gale suggested a pre-EU treaty could potentially be reenacted, although what is more likely is that these pensions, securities and benefits would be frozen -- similar to current rules in Australia, Canada and New Zealand -- and would cease to be exportable.

This would, of course, spell disaster for many British emigrants which depend on these benefits and securities. Pensioners, for example, may find their pension is not increased every year at the same rate as those that live in the UK or outright frozen. The [Centre for European Reform's](#) John Springford has also suggested angry EU member states -- such as Spain -- may begin to force British nationals to pay for formerly state provided health care.

Furthermore, economic uncertainty resulting from leaving the UK, and the devaluation of the pound, would also reduce the comparative value of any Sterling based pensions and benefits.

Will British Nationals Be Deported From Europe?



Leaving the EU will undoubtedly make life harder for the 1.2 million British nationals currently living, working or retiring in Europe. However, will it ultimately result in their expulsion from the EU?

This possibility has certainly been jumped on by advocates of the 'Remain' Campaign, with former attorney general Dominic Grieve claiming leaving the EU would essentially turn British emigrants in Europe into ["illegal immigrants overnight"](#).

Those of the 'Leave' campaign have fired back at this 'fear mongering' and have suggested there would be no tangible change to British nationals living abroad. In particular, they cite the [1969 Vienna Convention on the Law of Treaties](#), an international agreement which states that terminating an agreement "does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination." It is therefore claimed British citizens who have exercised their rights, will be able to keep them.

Unfortunately, it's not as simple as using these conventions as a safety net. For one thing, they are not universally agreed to and neither France, Romania or the EU as a single collective body have ratified the 1969 Vienna Convention. Furthermore, the process of evaluating which British nationals have exercised this right, and which

haven't, would be a bureaucratic nightmare precisely because freedom of movement does not require extensive documentation and recording.

Furthermore, the ['Process for Withdrawing from the European Union'](#) report devised by Secretary of State for Foreign and Commonwealth Affairs in February 2016 accepts that there is no treaty provision that prevents the termination of EU agreements to all Britons. It states:

“There would be no requirement under EU law for these rights to be maintained [for British nationals living in the EU] if the UK left the EU. Should an agreement be reached to maintain these rights, the expectation must be that this would have to be reciprocated for EU citizens in the UK.”

Little can be inferred from previous conventions or agreements, as the Brexit is unlike any other termination of a treaty. The apparatus of the European Union and its influence on member states is such that it can only be unravelled through currently unprecedented negotiation. For the most part, this negotiation will likely be based on reciprocity, and any limits Britain decides to place on EU nationals within their borders will likely be met with identical restrictions on British nationals in the EU.

Of course, such an arrangement currently seems unlikely. For many 'Leave' campaigners, the EU's freedom of movement rules are the prime source of dissatisfaction with the European Union, and they often form the central point in their anti-EU arguments.

Therefore, the maintenance of Article 45 rights in a post-Brexit Britain seems almost impossible, which, as the above suggests, will likely also result in the cessation of these rights for British nationals living in Europe. Ultimately, it seems the damage done to the status quo of British nationals in Europe, will likely depend on how much damage the British government is willing to impose on EU migrants within its own borders.