

Article by **Kevin James**, **Employment partner**, at **Payne Hicks Beach** first published online on Personnel Today on 13 January 2017 and reproduced by kind permission <http://www.personneltoday.com/hr/could-associate-eu-citizenship-become-a-worthwhile-employee-perk/>

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Could “associate EU citizenship” become a worthwhile employee perk?

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Will Theresa May, seen here leaving the EU summit meeting in December 2016, support "EU associate citizenship" for UK nationals after Brexit? PHOTO: Pool Christopher Licoppe Belgia via ZUMA/press/REX/Shutterstock

The proposal by an MEP that UK nationals could take out “associate EU citizenship” could appeal to UK employers who want to move staff around offices in different EU countries. But is it likely to be endorsed by the Government after a “hard Brexit”? Kevin James, employment partner at Payne Hicks Beach, examines the issue.

Theresa May continues to stress that the UK will pursue a so-called “hard Brexit” from the EU, and many employers are concerned that this will restrict their access to talent and ability to move employees around offices in different countries.

Not surprisingly then, the recent publicity surrounding the proposed creation of “associate EU citizenship” has prompted employers to consider what it might mean for their businesses if some or all of their employees opted for it.

Article 20 of the Treaty for the Functioning of the EU (TFEU) gives EU citizenship to all member state nationals, simply by virtue of their member state nationality.

It does not displace nationality, but is additional to it. This status was first introduced in the Maastricht Treaty 24 years ago.

The suggestion of creating associate EU citizenship has arisen thanks to a proposal put forward by MEP Charles Goerens to offer citizens from former member states the opportunity to opt in to associate citizenship and to retain certain benefits.

Fast-tracked

The proposal has been fast-tracked and is likely to be debated by the EU Parliament once the UK exits the EU. If a UK citizen were granted associate citizenship then certain benefits would flow as a result.

Those benefits would guarantee some of the rights enjoyed by EU citizens under Article 21-22 of the Treaty, including the right to:

- travel and live anywhere in the EU;
- vote and stand as a candidate in European and local elections in another EU country; and
- get diplomatic protection and consular help from any other EU country in another part of the world.

The right to free movement and to residency would be enormously attractive to UK citizens looking to live and work in the EU. It is also this right to continued free movement within the EU that is most attractive to employers.

James Crawford, managing director of Manchester-based PR agency One, has indicated that his company would be prepared to offer their employees up to £1,000 per annum if they wished to opt into associate EU citizenship.

He believes that small businesses with clients in European countries would find it easier to do business, following Brexit, knowing that their employees were able to move freely between these EU countries.

There are additional benefits to the individual outside of their employment, which would of course include the fact that some form of “European passport” would make travelling around Europe so much easier both for work and pleasure.

Associate EU citizenship as an employee incentive

Companies might incentivise their employees by making an offer to increase levels of remuneration for those willing to opt into the associate citizenship. At present, the proposal is that a fee would be payable in relation to this opportunity. Employers could consider paying that fee, as part of the incentive to their employees to opt in.

Political reaction from “leave” supporters has been condemnatory, describing the proposal as an “outrage”. They suggest that such a proposal undermines the decision of the British electorate and the outcome of the Brexit referendum.

It's likely, therefore, there will be a significant political lobby within the UK Parliament from "Brexiters", although it's difficult to see how they can influence the decision making in the EU parliament once the country has left the union.

Likewise, seeing as any such proposal would require approval by the European Parliament, those who are opposed to allowing the retention of various rights would undoubtedly oppose any opportunity for the citizens of a state who voted to leave the union, to then cherry-pick benefits that suit their particular requirements.

In addition, such a proposal might be ripe for challenge as it could be said to undermine the principle enshrined in Article 50, the right of member states to determine for themselves whether they wish to remain as a member of the EU.

Nonetheless, it is clear that for businesses that operate across Europe the resolution of present uncertainties about travelling to and working in the EU, by the grant of associate citizenship, would be an attractive option. The extent to which such an option will be available is difficult to predict.

However, if Goerens' proposals do come to fruition there is no reason why employers could not offer incentives such as increased remuneration and payment of "opt in" fees.

The danger for employers who have offered such benefits, however, is the possibility that employees enjoy working in other EU states and decide to take employment there with another employer.

An appropriate "claw back provision" in the employee's contract could be repayment of any fees or increased remuneration, but this may not compensate for the loss of a valued employee in whom time and money has been invested.