



The immigration consequences of withdrawal from the EU

28 June 2016

On Friday the UK voted to leave the European Union. It is important to note that there are no immediate legal consequences from the referendum result. Any legal changes will only take effect through an act of parliament, passing new laws and repealing European ones.

Immigration has been at the forefront of the referendum debate. We do not yet know what the position will be for the 3 million EU nationals and their family members who live in the UK, this is likely to become clearer in the weeks and months ahead. However, it is unlikely that any new laws would be applied retrospectively to EU nationals and their family members who are already resident in the UK, and similarly British citizens already resident elsewhere in the EU.

The big question will be over what restrictions are put in place post-withdrawal. Various options have been debated ranging from the retention of free movement to the application of the current immigration rules in full. Much talk has been of introducing an 'Australian style Points Based System', however that is what we already have. The rules would just apply to EU nationals as they do to any other foreign national.

EU nationals and family members

For those EU nationals and family already residing in the UK, the government is likely to introduce some provision that would allow them to retain their residence. This may possibly include a requirement to apply for a Home Office registration document as evidence of their status.

Those who have been in the UK exercising Treaty rights for more than 5 years will have acquired permanent residence and should consider applying for a permanent residence card from the Home Office to evidence this. This would then allow an application for Naturalisation as a British citizen either immediately or within 12 months, depending upon their entire length of residence.

EEA nationals who have been in the UK for less than 5 years can apply for registration certificates for themselves and residence cards for non-EEA family members as evidence of their lawful residence in the UK and exercise of Treaty rights.

Waiting times for decisions on these applications can stretch from 3-6 months and are likely to increase if there is an influx of applications.

- How to prove exercise of Treaty rights

An EU national is exercising Treaty rights in the UK if they are working, self-employed or self-sufficient.

Original evidence to support the application must be submitted and despite it being arguably unlawful to do so, the Home Office imposes strict evidential requirements which should be satisfied in order to ensure success.

Self-sufficiency is one area worthy of particular note. This is defined in EU law as being able to support oneself without reliance on public funds, and holding private medical insurance coverage for all treatment in the UK. Evidence of this would need to be supplied and again it is highly prescriptive.

- Family members

Spouses, partners and children under the age of 21, or older dependent children and dependant parents can qualify whether they are EU nationals or non-EU nationals. In some circumstances more distant relatives can also be considered as 'family members'.

Businesses

Businesses that employ EU nationals may wish to advise them of the options explained above so that they can take immediate action.

In the event of a loss of free movement rights when the UK formally withdraws, companies may wish to apply for a Sponsorship Licence from the Home Office which is the process that would allow them to employ foreign workers. There is facility within Tier 3 of the Points Based System (PBS) to make provision for low skilled workers which may need to be brought into force. Sponsorship under Tier 2, 3 or 5 of the PBS would then allow employers to continue to bring in the workers they require.

Tier 1 Investor visa holders

Given current market volatility, those who have Tier 1 Investor visas issued under the rules in place before 6 November 2014 should keep a watchful eye on the value of their UK investments. Under the pre-November 2014 rules, if the market value of the investments drops, it must be topped up by the next reporting period, which is either monthly or quarterly. Failure to do so can lead to the refusal of future applications.

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