



The Right of Scandinavians to Live or Work in the UK Post-Brexit

15 July 2016

The result of the EU Referendum vote on 23 June was a shock in so many ways but real concern is being felt by many Scandinavians living or working in the UK. As citizens of countries in the European Union (EU) or European Economic Area (EEA), they have been able to live or work in the UK without needing to apply for any form of residence status or even to register with a local Town Hall!

Denmark joined the EU in 1973, Sweden and Finland in 1995 and Norway and Iceland joined the EEA in 1994. A citizen from any of these countries coming to the UK after these dates has been able to come without applying for any form of residence status and few have chosen to take up British nationality. In a post-Brexit era, this has left many in a considerable state of uncertainty.

While the UK remains a member of the EU, which it is likely to do for up to two years after Article 50 of the Lisbon Treaty is triggered (being the process by which the UK formally notifies its intention to leave the EU), all European nationals will continue to have the right to remain in the UK. There has been speculation that those living in the UK at the time of the Referendum vote will be entitled to stay but no guarantees have yet been given and there is the distinct possibility that the position of EU nationals in the UK will in part depend on how UK nationals living in other EU countries are to be treated once the UK exits.

If no special provisions are put in place for EU nationals already living in the UK, they would need to qualify for permanent residence under the existing rules which apply for non-EU citizens. Although no issue arises until the UK actually leaves the EU, it is anticipated that the processing time for such applications will increase substantially the closer we get to the exit date. This has caused many from the Nordic countries to look at applying for permanent residence or UK nationality now.

An EU national is entitled to permanent residence in the UK if he or she has resided here for five continuous years with absences of less than six months in total per year. Throughout that period, the person must have been "exercising treaty rights" as a worker, self-employed person or self-sufficient person (or any combination of these) without any significant gaps. If there is an absence from the UK of more than two years, the clock re-sets and the continuous five year period must be re-established after returning to the UK. UK nationality can be applied for after six years' residence but permanent residence needs to be obtained first.

It is often thought that being married to a UK citizen gives some form of dispensation from the rules but this is unlikely to be the case for an EU national who has not entered the UK on a spousal visa (as might be the case for a non-EU citizen). The only real advantage of being married to a UK citizen is the ability to apply for UK citizenship after five years' residence rather than the usual six.

Another trap can be satisfying the self-sufficiency test, as the EU citizen may need to prove that they have not claimed any benefits whilst living in the UK. Benefits can extend to using the National Health Service or claiming Child Benefit Allowance, and so it may be necessary to demonstrate that Private Healthcare has been taken out.

Where one EU spouse qualifies for permanent residence purposes, the other spouse and any children under the age of 21 should be entitled to similar status as a dependant without needing to satisfy the above criteria in their own right.

The current climate of uncertainty for many Scandinavians living and working in the UK is greatly to be regretted. Payne Hicks Beach is able to offer immigration and citizenship advice as well as the full range of private client tax and estate planning services to anyone concerned about their personal position.

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If you wish to discuss any of the issues raised and in the event that you do not have a usual contact at Payne Hicks Beach, please contact the author further information please contact Frederick Bjørn by email or on 020 7465 4300.

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