

RIGHTS OF EU CITIZENS MARRIED TO BRITISH CITIZENS

We have previously discussed the rights of EU citizens living in the UK, but a question that still comes up frequently is **'what about the rights of EU citizens in the UK who are married to a British citizen?'** Many expect people in this category to have greater rights of residence than those who are not married to British citizens.

Q. What are the rights of EU citizens married to British citizens? Do they differ from the rights of those who are not married to a British citizen?

A. In short, no, there are no special rights afforded to those EU citizens with UK married partners: they are the same as those that exist anyway for EU citizens.

For EU citizens generally, if you are considered to be 'exercising treaty rights' in the UK, or a 'qualified person' in the language of The Immigration (European Economic Area) Regulations 2016, you will likely have a right of temporary residence in the UK, or may even have acquired permanent residence if you have been so for five years or more. A 'qualified person' is one who is considered to be: a worker, a jobseeker; a self-employed person; a self-sufficient person; or a student. There are further requirements such as Comprehensive Sickness Insurance (CSI) and certain financial thresholds that must be met by workers and self-employed persons to name just a few.

So, like any other EU citizen, if you are currently working you will likely have a right of temporary residence, or may have even acquired permanent residence if you have been doing so for five years or more.

Q. What about economically inactive EU citizen spouses of British citizens? What can they do to ensure they are allowed to stay in the UK?

A. If however, you are an economically inactive or 'unqualified' EU citizen, for example a stay-at-home parent or househusband/

housewife, you would not have an automatic right to residence in the UK even if you are married to a British citizen. Even if you do not claim any benefits and are fully supported by your spouse, unless you have Comprehensive Sickness Insurance (CSI) you will not be deemed to be 'self-sufficient,' and will not have any right to remain in the UK.

If you are an economically inactive EU citizen currently living in the UK it would, therefore, be advisable that you seek and enter in to genuine and effective employment, in order to be able to demonstrate at a later date that you have been/are exercising your right to freedom of movement. Alternatively, you could look in to becoming self-employed, or if you are supported by a spouse, look in to obtaining Comprehensive Sickness Insurance (CSI).

Q. What if I cannot afford comprehensive sickness insurance or I cannot work?

A. Firstly, it should be borne in mind that the EU and the UK are in midst of negotiations on the rights of citizens after Brexit. At the time of writing, it appears that after Brexit, the UK may offer a major concession, which is that the UK will "no longer require evidence that economically inactive EU citizens have previously held 'comprehensive sickness insurance' in order to be considered continuously resident". Negotiations are not yet concluded however and in the meantime, becoming economically active would appear to be a simple solution for many.





Secondly, even after the UK exits the EU, the UK will still remain a signatory to the European Convention on Human Rights (at least in the short term). This Convention is incorporated in to the UK's domestic law by the Human Rights Act 1998 and guarantees everyone the right to respect for their private and family life. Any EU citizen living in the UK with a British spouse will have a family life with that spouse and would at the very least have a human rights claim if no other claim to residence. It would be extremely difficult, if not impossible, for the government to 'kick out' EU citizen spouses of British citizens immediately after Brexit.

Q. So, are there any advantages to being married to a British citizen?

A. The only recognisable advantage for those EU citizens with British spouses is tied to British nationality law. Under current legislation, those who have already acquired permanent residence and wish to go on to apply for naturalisation as a British citizen are required to meet two main criteria:

1. Be free from any immigration restrictions for a further period of twelve months - in other words remain in the UK with permanent residence status for a further year; and
2. Be in possession of a permanent residence card when submitting a naturalisation application to become a British citizen.

However, UK law is more favourable towards those married to a British citizen when applying for naturalisation. The requirement to be free from any immigration restrictions for a further period of twelve months is not applied to those applicants who are married or in a civil partnership with a British citizen. Therefore, whilst these persons are required to hold a document certifying permanent residence, they do not have to wait a further twelve months after receiving this document before making their application to naturalise as a British citizen.

It is, therefore, strongly advised that those who can, want to, and are 'qualified,' should apply for a document certifying permanent residence and British citizenship. Naturalising as a British citizen is the simplest way to secure a right to remain in the UK after Brexit and, indeed, to influence future policy by gaining the right to vote.

Q. What happens if I separate or divorce from my British spouse?

A. Nothing, your situation will remain the same as before the separation or divorce, unless you arrived under the 'Surinder Singh' route.

Whilst spouses of EU citizens (excluding British citizens) may be able to retain a right of residence in the UK upon separation or divorce from their spouse, the rules that govern retained rights do not apply to EU spouses of British citizens.