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## FULL SERVICE

### BREXIT: RIGHT OF RESIDENCE FOR BRITISH NATIONALS - WHAT LIES AHEAD?

Great Britain is due to leave the European Union on 29 March 2019 – or perhaps not (yet). Whether it leaves at all and whether with or without a withdrawal agreement – all this remains unclear. The closer the withdrawal date draws, the less likely a consensual agreement is becoming. The period set by Great Britain's official notification of withdrawal of 29 March 2017 may therefore soon expire.

#### Uncertain times

These developments affect not only British companies in Germany but also British managers and employees living and working in Germany. There are considerable uncertainties for British nationals and their relatives living in Germany about how their right of residence in Germany will continue to be guaranteed in future: Whilst EU citizens enjoy extensive freedom of movement in the whole of Germany and throughout the entire European Union, the residence opportunities of so-named third country nationals are limited. In order to cushion the loss of Union citizenship for UK nationals to begin with, the German Bundestag has issued the "Brexit Transition Act". However, this Act requires a withdrawal agreement to be concluded between Great Britain and the EU. In the absence of such a withdrawal agreement, British nationals might soon be limited to having to apply for one of the general rights of residence applicable to all non-EU citizens.

#### Regulated Brexit

Should the withdrawal agreement in fact be concluded, both German and EU law will generally continue to treat Great Britain like a Member State for the duration of a transition period. EU provisions will continue to apply within Great Britain. British nationals will continue to be treated like Union citizens during a transition period until 31 December 2020 and will continue to enjoy their current freedom of movement under EU law. They will therefore be able to continue to live and work in the EU without restriction. There is also provision for a lifelong right of residence for which British nationals living in Germany prior to expiry of the transition period will be able to apply. Naturalisation is also made easier: During the transition period, German nationality will be able to be acquired subject to the usual conditions but without British nationality having to be given up.

#### Unregulated Brexit

The situation is different in the event of an unregulated Brexit. In the event of a hard Brexit - i.e. without a withdrawal agreement - the German government envisages a transition period of just three months. In this scenario, British nationals will have only the usual options under the German Residence Act available to them. The only open-ended titles here are the permanent residence permit and the EU long-term residence permit. However, there are high hurdles attached to these, including a five-year stay in Germany, proven knowledge of German and a secure living. Some affected persons will therefore have to resort to temporary rights of residence. For short stays, a visa is an option. In the event of longer stays for business purposes, a residence permit or a so-named Blue Card can be applied for. Based on the Federal Government's plans, it will also be possible to acquire dual nationality even in the event of a hard Brexit. The precise details remain open however.

#### Outlook

Irrespective of whether there is naturalisation or a right of residence: In view of the currently unresolved legal situation, the competent immigration authorities are only partly prepared for the various scenarios. The contract

negotiations appear to have reached a deadlock and the more time that passes without the EU and Great Britain converging, the greater the likelihood of an unregulated Brexit. All that is certain is that with this outcome thousands of British nationals will be forced to submit new applications at short notice. Affected persons are strongly advised to prepare for the various scenarios and the necessary steps in good time in order to ensure a “seamless” transition to a secure future right of residence. It is not only British nationals themselves who need give consideration to lawful residence however. Employers too must bear in mind that they will no longer be able to employ British nationals – who will then count as third country nationals – without restriction as previously. They must instead ensure that their employees have residence permits that allow them to work. If they fail to do this and employ British nationals without residence and work permits, they will be at risk of fines and may, in certain circumstances, face difficulties under social security and tax law.

#### EXPERTISE

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