Consequences for UK Citizens under Swiss Immigration Law

Following UK’s departure from the EU, the Agreement on the Free Movement of Persons (AFMP) with the EU will no longer apply between Switzerland and the UK. Switzerland and the UK signed an agreement on acquired citizen rights on 25 February 2019. The agreement is intended to protect the residence rights (and other rights) of Swiss and UK citizens acquired under the AFMP. With this agreement, these rights are preserved beyond Brexit.

The UK and the EU have agreed on a transitional period until 31 December 2020. This means that the UK will have the status of an EU Member State until this date. The AFMP therefore continues to be applicable until 31 December 2020 for UK nationals in Switzerland. UK nationals can acquire rights under the AFMP until this date.

The agreement on acquired citizen rights enters into force on 1 January 2021. If the transitional period agreed by the UK and the EU is extended, the agreement will come into force at the end of the new transitional period.

Nationals from the UK wanting to come and live in Switzerland after 31 December 2020 are not covered by the present agreement on acquired citizen rights. Family reunification remains possible under this new agreement.

1. Entry into Force

The agreement on acquired citizen rights will come into force as soon as the AFMP no longer applies between Switzerland and the UK. This will be after the transition period agreed between the EU and the UK ends on 31 December 2020, i.e. on 1 January 2021.

If the EU and the UK agree to extend the transition period, the agreement on acquired citizen rights will come into force at a later date.

2. Protected Rights

The agreement protects AFMP-rights acquired before 31 December 2020. The areas covered inter alia by the agreement are:

- Residence with gainful employment (employed and self-employed)
- Residence without gainful activity
- Right to family reunification
- Employment in Switzerland as cross-border commuter
- Continuation of service provisions (up to 90 days per calendar year) in the other country by companies and self-employed persons domiciled in Switzerland or the UK
- Principle of non-discrimination
• Right to purchase immovable property

3. Major Differences
There are the following major differences between the AFMP and the bilateral agreement on the acquired citizen rights between Switzerland and the UK:

- After 31 December 2020, the competent authority may require nationals from the UK to produce an extract from the criminal records register before issuing a new short-stay permit, residence permit or border commuter permit.

- Five years after the AFMP ceases to apply, i.e. after 31 December 2025, the reunification of future spouses will be regulated by the provisions of the Foreign Nationals and Integration Act (FNIA). These provisions are somewhat stricter than the AFMP rules. For example, a person must prove that they have sufficient financial means to pay their own and their family members’ living expenses.

- The preferential market access for person-related service provisions under the AFMP (90 days per calendar year) is no longer applicable after 31 December 2020. Those services fall under the conditions of the General Agreement on Trade in Services (GATS) of the WTO. Service provisions which started during the application of the AFMP can be concluded under the terms of the AFMP.

After 31 December 2020, UK nationals in Switzerland will have the status of third-country citizens.

4. Protected Rights under the AFMP
Rights can be acquired for as long as the AFMP still applies between Switzerland and the UK.

During the transition period agreed between the EU and the UK, the AFMP continues to apply between Switzerland and the UK. This means that AFMP rights must be acquired by 31 December 2020 at the latest.

5. No Need for Action
UK nationals living in Switzerland who obtained a short- or long-stay residence permit before 31 December 2020 do not generally need to take any action. The same applies to persons with an EU/EFTA cross-border commuter permit.

There is, however, a possibility that UK nationals with a valid residence permit may be called upon to exchange their current permit for another. This would not affect their existing right to remain, as long as the person concerned continues to meet the relevant residence requirements under the AFMP. If they are not called upon to exchange their permit, they must simply apply for a new permit before their existing one expires, as usual.

6. Validity
The rights acquired under the agreement are valid indefinitely, provided the conditions stipulated therein are met.

The acquired rights are lost, if the terms of the agreement are no longer met.

7. Immigration of UK nationals after the end of the AFMP
UK nationals wanting to immigrate to Switzerland after 31 December 2020 are not covered by the agreement.

Unless an additional bilateral agreement between Switzerland and the UK is concluded, UK nationals wanting to immigrate to Switzerland after 31 December 2020 must meet the terms of the FNIA. They would be subject to quotas in such a case.

Switzerland and the UK are conducting talks on a possible future immigration scheme. The exact form of the scheme has not yet been agreed.
8. No Visa

The current provisions continue to apply during the transition period, which ends on 31 December 2020, i.e. UK citizens do not need a visa to travel to Switzerland during this period.

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