

British Citizens and EU Member State Immigration Policy

Preparing for a “no-deal” Brexit

On Tuesday 15 January 2019 Members of Parliament (MPs) rejected the Withdrawal Agreement negotiated between the British government and the European Union.

British nationals and their family members who are currently working and living in EU member states face immigration uncertainty if the UK leaves the EU on 29th March 2019 without a deal in place.

EU member states are still assuming an orderly withdrawal of the UK from the EU. However, with no deal in sight, what are the possible consequences for British citizens abroad? Will the legal status of the affected British citizens change and will those changes be permanent?

In the absence of a binding Withdrawal Agreement including a chapter on Citizen’s Rights, each individual member state will apply its own laws. Listed below is a brief introduction to the policies and processes that a range of EU countries are likely to put in place in the event of “no-deal”.

Belgium

Belgium is currently preparing "emergency legislation" in relation to the no deal possibility. The first draft should be available towards the end of January 2019.

Czech Republic

The Czech Ministry of Interior produced a draft Act in preparation of a no-deal Brexit, which was approved by the government on 7 January 2019.

Should the UK withdraw from the EU without an agreement in place, those affected citizens already residing in the Czech Republic will be exempt from the current rules associated to third-country nationals until 31 December 2020, allowing for a 21 month exemption period. The Czech Republic is however looking to secure a reciprocal agreement.

Should an agreement on the UK's withdrawal from the EU under Article 50 (2) of the Treaty on European Union be concluded before 31 December 2020, the law will cease to apply.

France

France has announced it will activate its draft bill which outlines the position of British nationals in the event of no deal. However, much of the bill relies on how French citizens in the UK will be treated so that reciprocal arrangements can be made.

The draft bill currently states that British citizens will become third-country nationals and will therefore require a residence permit to enter the French territory and evidence their right to stay there. As such, the Europe Minister in France has advocated the government's intention to pass a decree that will ensure that British citizens can remain in France without incurring an irregular immigration status. In any event, all British citizens in France are encouraged to apply for the Carte de Séjour and it seems likely that this will be converted into the appropriate permit post-Brexit. This will also be a requirement in the event of no deal should an individual wish to stay in France for more than three months.

British citizens employed in France may be required to obtain a work permit in order to avoid their employers becoming criminally liable for employing foreign nationals.

Germany

British citizens will be considered third-country nationals, although resident British citizens will not be required to leave Germany.

A transitional approach is to be adopted which would allow British citizens to submit an immigration application to the competent foreigner's office in Germany (the type and category of which is to be decided). The period will initially run for 3 months from 29 March 2019 until 29 June 2019, which is likely to be extendable.

During this transitional period, and while an immigration application is decided upon, British citizens and their family members, who have been entitled to the freedom of movement under the EU Freedom of Movement Act, will be able to continue to live and work in Germany without a residence or work permit.

To remain and reside in Germany after the 3 month transitional period, British citizens will need a residence permit. To work, approval from the German employment agency is likely to be required.

In December 2018, the head of the foreigner's registration office in Berlin, Engelhard Mazanke, announced that it was not yet clear what kind of residence status British citizens would receive or what documents would be required, but was confident that the office in Berlin could offer a good and flexible service and process applications in around 8 weeks.

It is already possible for British citizens in Berlin to register their details online ahead of 29 March. Other foreigner's offices in Germany are already preparing for application procedures and may well be in a position to offer assistance before the date of departure from the EU.

Hungary

There is currently no agreement in place, however the relevant authorities are scheduled to pass legislation in February 2019, which may result in the implementation of a unique agreement that would highlight the importance of British citizens in Hungary to the Hungarian government, which would largely preserve the rights of UK citizens in Hungary in the event of a no-deal Brexit.

Italy

Italy has confirmed it is working on legislation to take effect by 29 March 2019 which will allow legal residence status to continue for those British citizens living in Italy on a regular basis.

Provided that British citizens are registered with their local registry office at their town hall, they will be granted rights and sufficient time to apply for long term residence status. Registration with the town hall is encouraged prior to 29 March 2019.

Lithuania

There are currently no formal proposals in place. However, officials in the media suggest that there will be a transitional period. It is thought that any visas/permits will continue to be valid until their expiry date and following this, applications will need to be made on the basis of being a third country national. The situation in Lithuania should be clarified shortly.

Luxembourg

There are currently no laws or regulations in place, however, on 16 January 2019, the commission of foreign affairs of the Luxembourg parliament held a meeting with the Luxembourg Minister of Foreign Affairs, Mr Jean Asselborn.

Mr Asselborn assured members of the commission that the Luxembourg government is currently working to identify solutions, with the aim of minimising any detrimental impact the no deal scenario may have on UK residents in Luxembourg.

Netherlands

The Netherlands has confirmed a transitional period from 29 March 2019 to 1 July 2020 and it is stated that British citizens will keep their rights of residence and employment.

To assist British citizens in evidencing their legal residence in the Netherlands until 1 July 2020, the Immigration and Naturalisation Service ('IND') will issue temporary residence permits in the form of a letter. The letter will indicate that even in the event of a no deal, UK citizens will be able to continue residing in the Netherlands and will receive a residence permit.

During the transitional period, the IND will issue a further letter inviting British citizens to apply for a residence permit. Details of the application process and document requirements will be included. The IND will endeavor to send the letters by 1 April 2020.

If the British citizen has not previously registered with the Personal Records Database ('BRP') in their municipality, they are not likely to receive the invitation letter. However, in order to apply for the permit, the individual must prove that they were resident in the Netherlands prior to 29 March 2019 and therefore they must be registered with the BRP.

Should a British citizen already hold permanent residence status, the IND will automatically change their status to issue them a national permanent residence permit. This does not require an application to be filed or any fees to be paid.

Poland

On 11 January 2019, the Polish government published a draft bill which outlined the legal framework for regularising the residence of British citizens in Poland.

Should a no deal situation occur, Poland proposes a 12 month grace period be provided, during which time British citizens will be able to apply for a temporary residence permit confirming their right to remain or a permanent residence permit if they have been resident for five years. Should the bill be passed, the process and document requirements will be regulated by the Ministry of Internal Affairs and Administration.

Portugal

There is currently no agreement in place, however it is proposed for the Portuguese government to adopt a favourable approach based on the strength of the British - Portuguese alliance, and thus British citizens living and working in Portugal should be given access to suitable resources as and when any negotiations are initiated.

As part of the British governments “outreach programme”, the British Embassy in Lisbon and the British Vice Consulate in Portimão, have and will continue to hold meetings across Portugal and assist British citizens with their concerns.

Spain

On Friday 11 January 2019, the Spanish Council of Ministers approved a “Report on the Contingency Plan in the event of a Brexit without a UK-EU Deal”.

The contingency plan includes but is not restricted to the following areas:

Legislation

The government intends to utilise Law from the Royal Decree, whereby amending current legislation and adopting new regulations in order to address the situation.

Logistics

Ensure the relevant immigration authorities and the Spanish Administration has adequate materials to facilitate immigration related matters in view of a “hard” Brexit.

Communication

Ensure immigration regulations and procedures are readily available to all concerned parties, via the Presidency’s web page <http://www.lamoncloa.gob.es/Paginas/index.aspx>

Although there is currently no agreement in place, the Spanish authorities propose to allow British citizens to change their immigration status in country, from that of an EU immigration category to that of a national Immigration scheme, which would likely be that which currently applies to third-country nationals.

Sweden

There is currently no agreement in place however there is speculation that UK nationals will be granted 1 years grace to regularise their status in Sweden.

Switzerland

Although Switzerland is not a member of the EU, the right of EU citizens to reside and work in Switzerland is governed by the EU, under an agreement known as the bilateral Agreement on the Free Movement of Persons (AFMP).

Once the UK leaves the EU, the AFMP will cease to apply between Switzerland and the UK.

However, in December 2018, the Swiss Federal Counsel approved a draft bilateral agreement with the UK, on the condition that the existing rights of Swiss and British nationals already residing in each other’s countries will be guaranteed when the UK leaves the EU.

The bilateral agreement has not yet been approved by the Swiss parliament. However, on 16 January 2019, the Committee on Foreign Affairs agreed that the bilateral agreement be applied provisionally.

It is expected that the Committee on Foreign Affairs will also shortly approve the bilateral agreement and thereafter the Swiss Federal Council (government) will sign the bilateral agreement. The next step is for the agreement to be approved by the Swiss parliament.

In the event of a "no deal" Brexit, the bilateral agreement will provisionally apply from 30 March 2019.

Under the bilateral agreement, the residence rights that British citizens acquired under the AFMP (i.e. up until 29 March 2019) will be protected and will be valid indefinitely.

Up until 29 March 2019, those UK nationals in Switzerland already holding a short- or long-stay residence permit, who will have therefore registered in a commune, will not need to take any action.

The same applies to persons with an EU/EFTA cross-border commuter permit.

Conclusion

Whilst the British government continues to negotiate Brexit, and with the possibility of Parliament not ratifying a Withdrawal Agreement, the Foreign and Commonwealth office advises British citizens to:

- Ensure they are correctly registered in their residential EU member state;
- Read the document UK nationals in the EU: essential information guide; <https://www.gov.uk/guidance/advice-for-british-nationals-travelling-and-living-in-europe>
- Follow their local British Embassy on Facebook or Twitter;
- Sign up for email alerts on living in the EU member state;
- Attend outreach meetings, available across many of the EU countries, arranged by the British Embassy;

A number of EU Member States have already given political assurances to UK Nationals about their residency rights, yet ultimately the ability to continue living and working in an EU country after Brexit depends on the EU and its individual Member States, and whether they reciprocate any agreement the UK has to offer.

Magrath Sheldrick LLP will continue to keep clients and professional colleagues updated on Brexit developments over the coming days.

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