



Mobility: Immigration alert

October 2020

Germany

BREXIT: Status of UK citizens from 1 January 2021

Executive summary

Following the passing of legislation as part of its preparations for Brexit, UK citizens and their dependents who exercised their right of free movement before 1 January 2021 will generally be able to stay and work in Germany after 31 December 2020. Where applicable this will be without interruption and in most cases without the need for a formal application.

Background & current status

The UK left the European Union with effect from 1 February 2020 subject to a transition period that lasts until 31 December 2020. During this time UK citizens have continued to be treated like EU citizens.

This means that until end of 2020 the European Freedom of Movement applies for UK citizens in Germany and their eligible dependent family members (including third-country nationals).

The German Government has stated a desire for the post 31 December 2020 period to be a smooth transition without severe consequences.

Three main scenarios

1. Status covered by Brexit Agreement

UK citizens who are living in Germany on 31 December 2020 and who have exercised the Freedom of Movement are covered by the Brexit Agreement between UK and EU. This means, after the transition period they shall receive

automatically a new status which allows them to continue to stay and work in Germany, as well as to depart and re-enter Germany. There will be no requirement to apply for this status. Instead, the UK citizen and their dependents shall receive this status by law. Accordingly, a special new residence document will be issued to prove this new status. This document generally shall be issued 'ex officio'. UK citizens who are not yet registered with the local foreigners' office need to register within 6 months after the transition end - thus until 30 June 2021 although this registration can also be done now. UK citizens who have been living in Germany for at least 5 years and so have received a permanent residence card are already registered at this office. This also applies to third country dependents.

The immigration authorities will face the challenge of high volumes for this new status combined with their limited capacities due to COVID-19. Consequently, it is recommended - even if the UK citizen or third country national dependent is already registered with the authorities due to its current status - to reach out to the competent foreigners' office to accelerate the issuance of the new status document, if needed.

2. Status not covered by Brexit Agreement

There are constellations where UK citizens have been using their right of Freedom of Movement but do not live in Germany. Such constellations usually are not covered by the Brexit-Agreement. Examples are persons who have been staying in Germany for short periods only, e.g. recurring short-term assignments or who stay with core family members on the weekend.

This group of UK citizens shall be allowed to stay or work in Germany after 31 December 2020, if the Right of Free Movement in Germany was used before 1 January 2021 and the underlying facts remain. Such UK citizens shall not be required to hold a residence permit or work authorization between 1 January and 31 March 2021. However, they shall be required to apply for a German residence permit with work authorization by 31 March 2021. If such an application is filed on time, work can also be continued after 31 March 2021 until such time as the government decides on their application.

3. New arrivals from 1 January 2021

With effect from 1 January 2021 the general German Immigration law applies for UK citizens as 'new arrivals'. This means, they need to obtain a German residence title (visa/residence permit) with work authorization up front before work can be started. It is possible that UK may be added to a group of "best friends" where some simplification rules would apply. However, this is not confirmed yet.

What does it mean for employers?

This development constitutes a welcome step towards more certainty for concerned employers and employees in Germany.

There are a few steps that may already now be taken to be better prepared for all scenarios:

- ▶ Identify any UK citizen within your organization working in Germany so you and the employee are aware that a status change will happen on 1 January 2021.
- ▶ Identify third country nationals who are dependents of a UK citizen and currently derive the freedom of free movement and right to stay and work in Germany without immigration documents based on their family status.
- ▶ If necessary: Compile standard documentation like position description, employment contracts etc. on the corporate side, as well as personal documents on the employee side (e.g. degree, CV, passport copy).
- ▶ Local foreigners' offices aim to develop locally suitable concepts in order to guarantee more certainty when it comes to the status of UK citizens and their dependents. Consequently, it depends on the local foreigners' office responsible which proactive steps may be taken already now. E.g. the foreigner's office in Berlin has provided an online registration portal to identify and acknowledge UK citizens and their dependents so they can be approached later once an immigration becomes mandatory.
- ▶ Overall, right now for each UK citizen should be determined where they are currently living in Germany and having their registered German living address. The responsible foreigners' office could and should be approached to verify whether any proactive steps can be taken.

EY can support organizations seeking to manage this process and ensure that employees with UK citizenship and their dependents remain compliant with German immigration laws.

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