



Mobility: Immigration alert

December 2020

Germany

BREXIT: UK nationals added to special scheme

Executive summary

The German government is proposing to add the UK to a list of non EU countries whose citizens receive preferred treatment when seeking authority to work in Germany. Under the proposed rules UK citizens will also be able to file work permit applications directly in Germany without a visa issued by a German embassy/consulate in their home country - and will be able to do this even for a longer-term stay or a stay associated with gainful employment.

The legislation for these changes have been laid before the German parliament. They are not applicable to UK citizens already in Germany if they are subject to grandfathering rules. These UK citizens may continue to work in Germany without applying for a separate work and residence permit.

Details

With the end of the transitional Brexit period on 31 December 2020, nationals of the UK coming to Germany newly from 1 January 2021 do not have the EU rights to free movement of workers anymore but rather need German work authorization. All general schemes for such authorization (e.g. Blue Card, Inter-Company Transfers (ICT), Local hire specialist) are available to UK citizens starting newly in Germany as well as the population of UK citizens who are not covered by the withdrawal agreement.

The preferred scheme applies where these general schemes are not applicable has the following requirements and easements beside that of citizenship:

- ▶ Formal professional qualification not required
- ▶ Legal employer can remain outside Germany - therefore, a Local German employment contract is not required
- ▶ Comparable salary is required
- ▶ Labor market check (verification whether German or EU nationals are available for the position) is required.

With the current lack of skilled labor on the German labor market, for certain categories, e.g. specialists and university graduates, it is unlikely that the labor market check will prevent an approval. However, this may change over time. Furthermore, under Covid-19, travel to Germany and granting of work authorization is restricted significantly. With this background some schemes like Blue Card, ICT, Local hire specialist are positively listed so they can be still granted. However, the regulation for preferred nationals - shortly to include the UK - is currently not yet listed. Thus, for the time being, this additional option may have no or only minimal practical use.

Adding UK to the visa waiver for long-term or work-related stays in Germany, does not apply to ICT where it is always necessary to obtain a consular visa. In any event, when arriving as a UK citizen without a visa, work can only start when work authorization has been applied for and issued.

This process for work authorization application when in Germany can take time and depends on the workload of the relevant government office. Therefore, obtaining a visa that allows work is always recommended if work needs to start immediately.

What does it mean for employers?

The additional scheme for obtaining work authorization for UK citizens will provide more flexibility for employers in case the general schemes cannot be used (e.g. because requirements are not met). Still, it has to be taken into account that the benefits of this status such as no qualification requirements, are tied to a mandatory requirement of a labor market check.

Next steps

Employers are encouraged to begin the application for UK citizens who need to start working and living in Germany from 1 January 2021. This should include a review of whether a standard consular visa should also be obtained and the most appropriate scheme to be used.

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ey.com

Florian Brandl
Tel: +49 6196 996 27327
Email: florian.brandl@de.ey.com

Martina Unrau
Tel: +49 6196 996 10077
Email: martina.unrau@de.ey.com

Jan Werner
Tel: +49 6196 996 16586
Email: jan.werner@de.ey.com

Mostafa Massoud
Tel: +49 6196 996 29033
Email: mostafa.massoud@de.ey.com

Svenja Rohrmann
Tel: +49 6196 996 18215
Email: svenja.rohrmann@de.ey.com

Ulrike Kürten
Tel: +49 351 4840 18771
Email: ulrike.kuerten@de.ey.com