

Mobility: Immigration alert

November 2020



Switzerland

Post Brexit UK-Switzerland Immigration perspective

Executive summary

On 31 January 2020, the United Kingdom (UK) officially left the European Union (EU). With this decision began a transition period scheduled to run until¹ 31 December 2020. From an immigration perspective, the bilateral Agreement on free movement of persons (AFMP) remains applicable to UK nationals during this transition period. Thereafter, the AFMP will no longer be applicable to UK nationals. However, as the UK is an important partner for Switzerland, the Federal Council wants to therefore ensure that existing mutual rights and obligations continue to apply and are even expanded after the end of the transition period.

In this context, the Federal Council approved the bilateral UK-Swiss agreement on citizens' rights post Brexit (hereinafter: the "Agreement on citizens' rights")². The Agreement on citizens' rights protects the rights of Swiss and UK nationals obtained in the UK and respectively in Switzerland under the AFMP (e.g. residency rights) before the end of the transition period. It is expected that the Agreement on citizens' rights will replace the AFMP as 1 January 2021.

Applicable legal scheme to UK nationals until 31 December 2020 and bilateral UK-Swiss Agreement on citizens' rights *Applicable regulation*

The AFMP remains applicable for UK nationals until 31 December 2020 (end of the transition period).

At the end of the transition period the bilateral UK-Swiss Agreement on citizens' rights shall enter into force, i.e. as from the 1 January 2021.

Some of the main areas covered by the UK-Swiss Agreement on citizens' rights are:

- Residence with gainful employment (employed and self-employed);
- Residence without gainful activity;
- Right to family reunification;
- Employment in Switzerland as a cross-border commuter;
- Principle of non-discrimination;
- Right to purchase immovable property.

UK nationals benefiting from the bilateral UK-Swiss Agreement on citizens' rights

The two following categories of UK nationals will be covered by the Agreement on citizens' rights:

- UK nationals already established in Switzerland, holding a valid Swiss permit obtained under the AFMP regulation;
- UK nationals who will be established in Switzerland by 31 December 2020, and who will hold a valid Swiss permit obtained under the AFMP regulation.

¹This period could be extended should both parties agree.

²The Agreement on citizens' rights was approved by the Federal Chambers on 25 September 2020. A referendum deadline is currently running until 14 January 2021.

Type of permits

Until the end of December 2020, UK nationals wishing to relocate to Switzerland can apply for the following Swiss permits **as EU-citizens**, considering the current **AFMP regulation**:

- B/L permit will continue to be issued (depending on the duration of the Swiss residence), B permit being usually issued for a 5-year period;
- C permit will continue to be issued upon application after 5 years of Swiss residency³;
- G permit will continue to be issued to cross border commuters.

Note: After the end of the transition period on 31 December 2020, upon renewal of their Swiss permits, UK nationals will be asked to register their biometric data.

Applicable legal scheme to UK nationals as of 1 January 2021 and Foreign Nationals and Integration Act

Applicable regulation

Unless an additional bilateral agreement between Switzerland and the UK is concluded, UK nationals wishing to relocate to Switzerland after the AFMP ceases to apply must meet the terms of the Foreign Nationals and Integration Act (FNIA). They will be treated as third-country nationals. Specifically, for any job applications from UK nationals in Switzerland, the priority of Swiss and EU nationals will need to be considered first and all employment/remuneration conditions will have to be met.

However, the final position of the Swiss authorities must still be defined to clarify how the FNIA provisions will be applied in practice and whether facilitated measures in the procedure will be introduced for UK nationals' applications.

UK nationals subject to the Foreign Nationals and Integration Act

All UK nationals who do not have a valid Swiss permit obtained through the AFMP regulation and who wish to relocate to Switzerland after 31 December 2020, will be subject to the FNIA.

Type of permits

As of 1 January 2021, UK nationals wishing to relocate to Switzerland can apply for the following Swiss permits as **third-country nationals**, considering the **FNIA regulation** (and its practical application which should be defined by the authorities in the near future):

- B/L permits will be issued (depending on the duration of Swiss residence) providing all FNIA conditions are met, B permits are likely to be issued for a 1- or 2-year period only;
- C permits will be issued upon application after 10 years of Swiss residency⁴;
- G permits will be issued to cross border commuters provided all FNIA conditions are met (in particular, place of residence has to have been in a cross-border area for at least 6 months).

Note: As of 1 January 2021, UK nationals applying for new Swiss permits will be required to proceed with the biometric formalities upon registration.

Next steps

The Agreement on citizens' rights shall enter into force as of 1 January 2021; it will protect the rights of Swiss and UK nationals obtained under the AFMP regulation.

Unless any additional bilateral agreements between Switzerland and the UK are concluded, UK nationals wishing to relocate to Switzerland as of 1 January 2021, will have to comply with the FNIA. In the near future, Swiss authorities should provide related information on the practical application and procedure to be handled by the Cantonal authorities with respect to UK nationals' applications. It is therefore highly recommended to closely follow developments on Brexit.

^{3/4}Provided all conditions are met (in particular language requirement).

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