



# BREXIT – WHAT ARE THE CURRENT PROVISIONS IN RESIDENCE AND EMPLOYMENT LAW?

## AUSTRIA

### Immigration and residence

#### Residence before 01.01 2021 in Austria

Since 01.01. 2021, UK-Citizens may continue to have unrestricted access to the Austrian labour market, if they exercised their right of residence in Austria before 31 December 2020 and continue to live in Austria beyond that point. However, UK-Citizens residing in Austria must apply for an "Article 50 TEU" residence title by 31.12.2021, in order to ensure their right of residence and the associated unrestricted labour market access beyond 31.12.2021.

The same applies to UK-Citizens that are just living in Austria. They may continue to reside in Austria, as long as there is no drawing of social welfare benefits for themselves and their family members. There is also a need for a comprehensive health insurance.

An issued residence permit is valid for 5 years. In case a permanent right of residence is already acquired, the residence title is valid for 10 years.

#### Residence after 01.01 2021 in Austria

Since 01.01.2021, every UK-Citizen that intends to live in Austria for more than 3 months at a time, must apply for a valid residence permit.

For UK-Citizens, who have not worked in Austria before 31.12.2020 are subject to the same regulations as other newly arriving third-country nationals. They can then be admitted under certain conditions, for example by means of a Red-White-Red Card (“Rot-Weiß-Rot Karte”) as highly qualified key workers, qualified skilled workers in shortage occupations, start-up founders or by means of seasonal worker employment permits in the context of special quotas.

### Business trips

In general, as a citizen coming from the UK, there is no necessity of applying for a Visa when traveling to Austria. A UK-National may stay in Austria for up to 90 days in any 180-day period.

This rule applies to both short-term business trips and longer-term posting of workers.

### Employment

If a UK-Citizen is to be temporarily employed in Austria by the employer within the group of companies, a residence permit may be obtained. The residence permit entitles to stay and to work. The requirements include an employment in the company of at least nine months, the submission of an employment contract proving the necessity of the temporary transfer and proof that the company is engaged in a genuine business activity.



## CZECH REPUBLIC

### Immigration and residence

In order to determine which rules apply to UK citizens residing in the Czech Republic, it is necessary to determine whether the UK citizen entered Czech Republic before or after the end of the transition period i.e. 31.12.2020.

UK citizens who legally resided and / or worked in the territory of the Czech Republic before or during the transition period will not be subject to any change in relation to Brexit. However, these persons are obliged to prove that they were legally residing in the Czech Republic before the end of the transition period. The burden of proof rests on the British citizen residing in the Czech Republic. In practice, the UK citizen is required to provide an employment contract, lease agreement, etc., which shows that the contractual relationship started before the end of the transition period. This category of UK citizens shall also apply for a Certificate of Temporary Residence or Permanent Residence.

A British citizen posted to the Czech Republic for work before the end of the transition period shall receive a work permit issued by the competent Czech employment office.

### Employment

UK citizen, who commutes to the Czech Republic for work (so-called cross-border worker), shall apply to the relevant labor office for a respective certificate. If such UK citizen decides to settle in the Czech Republic, a temporary residence permit shall be requested.

UK citizen who already has a temporary or permanent residence in the Czech Republic shall exchange his residence card for a biometric one in the period from August 2021 to August 2022.

UK citizen who plans to work, study or stay in the Czech Republic for a long time is seen as a

third-country national, i.e., such UK citizen needs to obtain the relevant residence and work permit at the Czech embassy abroad.

UK citizens entering the Czech territory for the first time after the end of transition period shall be granted Long-term residence permit, similarly to the third country nationals. Long-term residence permit may be granted for the purpose of work, study, family reunification, business etc.

The law amending the Czech law on the residence of foreigners in the Czech Republic is currently being discussed in parliament. It is to be expected that the changes will take place this year. As soon as the final legal text is accepted, we will inform you.

It remains to be added that Trade and cooperation agreement between the European Union and the European atomic energy community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part only regulates certain forms of job mobility for business purposes, namely:

- Allows the transfer of employees from EU / UK based companies to work in an associated company based in the UK / EU for a maximum of 3 years (so-called intra-corporate transferees).
- Facilitates the movement of "contractors" or "independent experts".
- Allows so - called "business visits", which do not provide services, entry, short stay and the performance of certain activities.

Although the Agreement on Trade and Cooperation leaves the conditions for entry into the labor market of both parties to national regulations, it lays down detailed rules for the coordination of social security.

The agreement provides access to social security for all persons who have been or are subject



to the regulations of the Contracting Parties. At the same time, the condition is set that the Agreement applies only to persons in the so-called cross-border situation.

The Trade and Cooperation Agreement regulates access to sickness and maternity benefits, all types of pensions, benefits for accidents at work and occupational diseases, and unemployment benefits. Family benefits, long-term care benefits and some other benefits are expressly excluded. This means that their provision will be governed exclusively by the national regulations of both parties, not by the Agreement.

## GERMANY

### Immigration and residence

Since 01.01.2021, British nationals who were previously entitled to reside or work in Germany and who had exercised this right have essentially the same rights as they had before Brexit. These rights exist by operation of law, so they can be asserted without further action. In order to prove these rights, it is mandatory to have a residence document, which can be obtained from the responsible Foreigners Authority (Ausländerbehörde). Until June 30, 2021, British nationals who were residing in Germany on 31.12.2020, and who will continue to reside in Germany, must report their residence to the Foreigners Authority responsible for their place of residence in order to obtain the new residence document. This privilege only applies to British citizens who have been treated as EU citizens by virtue of their status during the UK's membership of the EU.

### Business trips

British citizens do not need a visa for visits and/or business trips with a maximum duration of stay of 90 days within a period of 180 days. However, this only applies as long as no gainful employment is to be carried out. For British nationals, the Schengen entry requirements for

visa-exempt third-country nationals apply. When crossing the border, travellers must carry with them the documents and evidence required for entry into the Schengen States, in particular a valid travel document and evidence of the purpose and circumstances of the intended stay. They must also have sufficient means of living (for the duration of the stay and the return journey). This also includes adequate travel health insurance (as of 01.01.2021, the EHIC card will regularly no longer be sufficient).

### Employment

From 01.01.2021, the general immigration law for third-country nationals will apply to newly arriving British citizens. But even for longer-term stays in Germany - for example, for study or work purposes - newly arriving British nationals do not need a visa. They must apply for a residence title at their future place of residence at the Foreigners Authority. However, if they wish to work before obtaining a residence title, they must apply for a visa that allows them to work before entering the country.

Newly arrived British professionals and other employees are granted easier access to the labour market. In order to take up employment in Germany, the approval of the Federal Employment Agency (Bundesagentur für Arbeit) can be granted with a priority check for the pursuit of any employment, regardless of the location of the employer.

As of 01.01.2021, the facilitations granted on the basis of the Freedom of Movement are no longer applicable for non-EU family members of British and German nationals, neither when applying for a visa nor when crossing the border.

## HUNGARY

### Immigration and residence



Based on the Withdrawal Agreement, people from the UK and their family who arrived to Hungary before the end of the transition period (31.12.2020) may retain their acquired rights resulting from the EU citizenship even after the end of the transition period, such as for example their national permanent residency. An application for the new status needs to be made to the Hungarian Immigration Office by 31.12.2021. Until this day documents (registration certificate, residence card, permanent residence card) issued earlier remain valid.

The mobility of persons is also part of the ongoing negotiations on future relations between the UK and the EU. Unless otherwise agreed, UK nationals and their family members who arrive in Hungary after the end of the transition period will be subject to the general rules applicable to third-country nationals.

In relation to third country nationals the general conditions for staying longer than 90 days in Hungary are set out in Act No. 2 of 2007 on the Admission and Residence of Third-country Nationals, depending on the purpose of the stay. Detailed information on the procedures is available on the website of the Hungarian Immigration Office.

### **Business trips**

For short-term stays of up to 90 days in any 180-day period, the European Union has adopted a specific regulation pursuant to which UK nationals will be exempt from the visa requirement, if EU citizens are also exempted from the visa requirement in the United Kingdom.

### **Employment**

Persons who were lawful residents in Hungary prior to 01.01.2021, have the right to work, as long as their residency status remains valid. These persons will not need to apply for a work permit. In any other cases, UK citizens have to apply for a work permit, unless they can rely on any of the following exemptions:

- being family member of an EU national or a non-EU national who has authorisation to work (subject to conditions);
- working as a head of the branch and representative office of the third country company;
- being holder of an EU Blue Card.

## **ITALY**

### **Immigration and residence**

All British citizens who are registered as residents in Italy by the end of the implementation period will be able to stay in Italy without the need of a visa. However, from 01.01.2021, they may be asked to show a proof of residence when re-entering, such as an identity card, a registration certificate or a utility bill in their name. Also, UK Nationals registered as residents after 31.12.2020 will retain their right to stay in Italy. Those who have not yet resided continuously and lawfully in Italy by the end of the transition period will also be able to stay until they have reached the five-year threshold, at which point they will qualify for the right to reside permanently. Until this five-year threshold has been met, continuity of residence is necessary, which will be broken by a period or periods of more than six months in total in any 12-month period.

After 31.12.2020, British citizens who are not registered as Italian residents will be allowed to stay in Italy for no longer than 90 days within any period of 180 days. This applies to a person who travels as a tourist, to visit family or friends, to attend business meetings, cultural or sport events, or short-term studies or training. NB: Visit to Schengen countries within the previous 180 days before another travel counts towards the period of 90 days! At the Italian border control, British citizens may be asked to show a return ticket, to have enough money for the stay and to have their passport stamped on entry and exit.



### Business trips

Except all the actions that travellers need to take (such as having a valid passport), UK Nationals should be aware of extra requirements if they travel to Italy for business purposes. They are obliged to get a visa, work permit or other documentation if they plan to stay longer than 90 days, unless any of the following applies:

- transferring from the UK branch of a company to a branch in Italy;
- carrying out contracts to provide a service to a client in Italy when their employer has no presence there;
- providing services as a self-employed person.

### Employment

Regarding work privileges, British people who will want to start working in Italy after the Brexit, will be required to apply for a work visa or another resident permit granting work privileges. They will be obliged to satisfy several requirements, such as having an employment contract and keeping it for the entire duration of the stay in Italy.

## POLAND

### Immigration and residence

If British citizens have registered their stay in Poland **before 31.12.2020**, they can stay and work based. Residence permits issued to the United Kingdom citizens and their family members until the end of the transition period will remain valid for the period for which they were issued, but no longer than until 31 December 2021.

**From 01.01.2021**, beneficiaries of the Withdrawal Agreement will be able to submit applications for a new residence document to voivodship offices.

The privileges from the Withdrawal Agreement do not apply to posted employees. Based on the provisions of Polish national law, which has entered into force on 01.01.2021 these persons will be able to submit from that date an application for a special temporary residence permit. An application for granting the temporary residence permit for British posted workers may be submitted no later than by 31.12.2021.

The British citizens and their family members who are not beneficiaries of the Withdrawal Agreement will be subject to the general rules of entry and stay on the territory of Poland relating to third-country nationals. This means that in general the UK citizens need to have visa or residency permit in order to stay in Poland.

The legal basis for rendering work in Poland is in general work permit. Depending on the factual circumstances of the particular UK citizen case, we may deal with different types of work permits. Most common is type A when the employee is on Polish payroll.

### Employment

Employees can be temporarily posted to Poland. In general, the posting employer need to apply for work permit for the posted employee (type D-E depending on kind of posting). There are some exceptions from obligation of having work permit. This is situation when the UK employee is posted to the Polish company which is related by capital or managing persons to the Polish company. However, this exemption works only for 30 days in calendar year.

If the work permit is issued, the employee may apply in the Polish Embassy in London for Polish national visa type D. The visa is issued for maximal one year.

## ROMANIA

### Immigration and residence



After the end of the transition period the United Kingdom nationals who have exercised their right to work in Romania before 31.12.2020 and wish to continue to do so will have unrestricted access to Romania and to the Romanian labour market on the basis of the new residence permit they obtained or applied for under the Withdrawal Agreement.

### **Business trips**

British citizens for whom the regulations of the Withdrawal Agreement do not apply, can travel to Romania for up to 90 days in any 180-day period without a visa. This applies if you travel as a tourist or if you are attending business meetings.

It is important to know that visits to other EU-Schengen countries do not count towards the 90-day limit in Romania as it is not in the Schengen area. Therefore, also visits to Romania do not count towards the 90-day visa-free limit in the Schengen area.

### **Employment**

Without application of the Withdrawal Agreement, in case of assignment/secondment or generally in order to work in Romania, British citizen will need a work permit as well as a visa to live and work in Romania. The employee must obtain a visa by applying through the diplomatic missions and consular offices of Romania. Afterwards a work permit has to be obtained for the employee in Romania in order to be allowed to legally work in Romania.

## **SLOVAKIA**

### **Immigration and residence**

In accordance with the EU-UK agreement, Slovakia has decided to apply the determination system (Article 18(4)), on the basis of which no new residence procedure is required for the beneficiaries of the agreement.

All British citizens and their family members who obtained a legal registered right of residence in Slovakia before or by 31.12.2020 will automatically receive one of the types of permanent residence, guaranteeing all rights under the Agreement on Exit. The residence permit was automatically changed on 01.01.2021.

British citizens and their family members apply for a new residence permit as third country nationals no later than 30.06.2021, depending on the length of stay in Slovakia before 01.01.2021 (permanent residence for 5 years or permanent residence for an indefinite period).

In the case of British citizens and their family members who have had a registered right of residence in Slovakia for less than 5 years by the end of the transition period (31.12.2020), their right of permanent residence was changed to the duration of 5 years.

For British citizens and their family members who have had a registered right of residence in Slovakia for more than 5 years by the end of the transitional period (31.12.2020), the right of residence was changed to permanent residence for an indefinite period. The Ministry of Interior of the Slovak Republic recommends applying for document exchange by 30.06.2021.

British citizens who had legal residence in the territory of Slovakia but were not registered before 01.01.2021, but who wish to continue to remain in Slovakia, should contact the relevant department of the Aliens Police as soon as possible to register your stay. The requirement for registration is credible proof that they have resided in Slovakia prior to 01.01.2021 and have met and continue to meet the residency requirements as an EU citizen prior to 01.01.2021. After registering their residence, they can continue to use their residence rights in Slovakia as much as before. By registering their residence, they acquire permanent residence, which guarantees all rights under the Withdrawal Agreement, and



they are issued a certificate of permanent residence.

Family members of British citizens who do not have registered residence as family members of EU citizens in Slovakia, who wish to remain in the Slovak Republic as a family member of a British citizen covered by the Agreement on Withdrawal, must report to the relevant Aliens Police Department to register their residence; The requirement for registration is credible proof that their family relationship with a British citizen existed before 01. 01.2021 and that the British citizen of which he/she is a family member (i) had a registered right of residence or a right of permanent residence before 01.01.2021 or (ii) resided in the territory of the Slovak Republic before 01. 01. 2021 and fulfilled and continues to fulfill the registration requirements as an EU citizen. By registering residence, this person acquires permanent residence, which guarantees all rights under the Withdrawal Agreement, and receives proof of permanent residence.

British citizens who did not reside or were registered in the territory of the Slovak Republic before 01.01.2021 can apply as third-country nationals from 01.01.2021 accordingly (depending on the type of right of residence), according to the conditions of the Law on Residence of Foreigners. You can apply for residence at the Embassy of the Slovak Republic abroad (for example in London) or at the relevant department of the Aliens Police in Slovakia.

### **Business trips**

British business travelers coming to Slovakia on business do not need a visa if they stay less than 90 days; they also do not need a work permit if they are not engaged in paid activity.

## **SPAIN**

### **Immigration and residence**

After the end of the transitional period, British citizens in Spain basically have the same rights as all non-EU foreign citizens since 1 January 2021. However, the withdrawal agreement concluded between the EU and the United Kingdom offers some relief in various respects.

#### Residence before 01.01.2021

If British citizens have lived in Spain before 31.12.2020, they can apply for residence in Spain as if they were EU citizens from 2021.

British citizens who have been in possession of an "EU membership certificate" for more than 5 years have direct access to permanent residence before their document. This new residence document will be valid for 10 years and will be marked as "permanent"

#### Residence after 01.01.2021

From that date, every British citizen who wants to live over 3 months in Spain needs to request a valid residence permit.

### **Employment**

In order to work as an employee in Spain, British citizens will have to opt for one of these two routes:

#### Residence and work permit for employees.

For this purpose, the applicant must have a job offer that fits within the occupations provided for in the National Employment System (SNE) or prove that he is exempt from the application of said system and can be hired with any job offer.

#### Highly Qualified Worker Permit.

To process this permit, it is required to have higher education related to the position offered and that the job offer involves a high salary



(more than 54,500.- euros per year for directors and managers and more than 40,500.- euros for other professionals).

In all other cases, if the British citizen does not wish to come to Spain as an employee, there are the general visa options, for example:

- Investor's visa, if the interested party intends to make an investment in real estate to obtain residency.
- Student visa, which allows the interested party to modify it afterwards to a work permit.
- Non-lucrative residency, which requires the possession of sufficient economic means and private health insurance.

Employees can be temporarily posted to Spain by their employer for a specific task. For this, various requirements must be fulfilled, including that the employee must have "habitually" carried out the activity in his/her country of origin and have done so for more than one year. In addition, the employee must have been employed by the posting company for more than nine months.

## CONTACT

### **Austria:**

*Thomas Ruhm*  
*T.Ruhm@scwp.com*

*Julia Spitzbart*  
*J.Spitzbart@scwp.com*

### **Czech Republic/Slovakia:**

*Monika Wetzlerova*  
*Wetzlerova@scwp.cz*

### **Germany:**

*Christian Reichmann*  
*Christian.Reichmann@schindhelm.com*

### **Hungary:**

*Beatrix Fakó*  
*B.Fako@scwp.hu*

### **Italy:**

*Florian Bünger*  
*Florian.Buenger@schindhelm.com*

### **Poland:**

*Katarzyna Gospodarowicz*  
*Katarzyna.Gospodarowicz@sdzlegal.pl*

### **Romania:**

*Helge Schirkonyer*  
*Helge.Schirkonyer@schindhelm.com*

### **Spain:**

*Luis Bravo*  
*L.Bravo@schindhelm.com*

*Moritz Tauschwitz*  
*M.Tauschwitz@schindhelm.com*