



GMS Flash Alert

Immigration Edition

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Germany – If U.K. Exits EU with No Deal, New Rules at Ready

In anticipation of a “no-deal” Brexit, the German government has started to implement certain mechanisms and commenced statutory negotiations in respect of British citizens currently living in Germany or moving to Germany before 29 March 2019, the date Britain is scheduled to leave the European Union (EU).

The German cabinet in December approved draft legislation to set out the terms and conditions applicable to people in Germany affected in the event of a no-deal Brexit.¹ The aim is for this German legislation to enter into force on the same date as the Withdrawal Agreement or the U.K. departure from the EU under a no-deal Brexit.

WHY THIS MATTERS

After Brexit, U.K. citizens are no longer European Union (EU) citizens and thus can no longer claim residence in an EU or European Economic Area (EEA) member state on the basis of the EU treaty. The measures that are planned should help ease the concerns of U.K. citizens living and working in Germany in the event of a no-deal Brexit and aim to help clarify and assure their rights following 29 March 2019. This is equally important for German companies that employ U.K. citizens.

Current Context

On 15 January 2019, the British parliament voted against the Withdrawal Agreement² that had been negotiated between the EU and the British government led by Prime Minister Theresa May.³ This outcome makes a no-deal “hard” Brexit seem more likely on 29 March 2019. It also raises the question about the consequences that would have on migration law.

Residence Permit

From a German immigration law perspective, the current no-deal situation means that British citizens who wish to enter Germany after Brexit and are not otherwise entitled to vested benefits (e.g., on the basis of a dual nationality or because they are family members of an eligible citizen of the EU) will be, legally-speaking, "third-country nationals" within the meaning of the Residence Act – they have to be treated as such from 29 March 2019. Currently, individuals who are generally permitted entry on the basis of the EU's right of free movement and those in Germany under a generally permitted stay (§ 2 I, IV, V FreizügG / EU) will be subject to authorization according to § 4 I 1 AufenthG. Therefore British citizens who wish to enter and stay in Germany starting 29 March 2019, will very likely have to go through the standard immigration process and apply for a residence permit.

British citizens who are already staying in the Federal Republic of Germany prior to 29 March 2019, and are entitled to permanent residence (§ 4 a FreizügG / EU (Article 16 RL 2004/38)) will not be required to leave Germany immediately in the event of a no-deal Brexit. The federal government is planning an initial transition period of three months presumably starting 29 March 2019 (though, not yet established), which can be extended. During this time, British citizens and their family members who previously had the right of free movement will be able to continue living and working in Germany as before.

All those affected will be required to apply for a residence permit before the end of the transition period at their local foreigner's authority (*Ausländerbehörde*). They will also be required for their ongoing residency to register with the resident's registration office (*Einwohnermeldeamt*) responsible for their place of residence, if they have not already done so. They will be allowed to remain in Germany for the time between submitting their application and receiving the decision from the foreigner's authority.

Naturalization

British and German naturalization candidates who apply for naturalization in Germany or the U.K. before the date of the U.K. leaving the EU will be allowed to keep their existing British or German citizenship even if the decision on their naturalization is issued after 29 March 2019, provided that all other naturalization requirements are met before the exit day.

In the event of a disorderly Brexit, a similar rule will be put in place for naturalization candidates who apply before the date of the U.K. leaving the EU.

Applications filed after the date of the U.K. leaving the EU most likely will be treated as applications from non-EU citizens, which in most cases would lead to the applicant losing his/her existing citizenship, given that Germany permits dual citizenship only in certain exceptional cases.

KPMG NOTE

Although these arrangements are a starting point to clarify and give guidance for the considerable number of people and companies that will be affected by a no-deal Brexit, there is still much to do in terms of formulating and implementing appropriate regulations and addressing uncertainties arising from a no-deal Brexit.

The KPMG International member firm in Germany is closely monitoring the developments on Brexit and will endeavour to report on any updates where relevant and as soon as possible..

FOOTNOTES:

1 For more information on German draft legislation in the event of a “disorderly” Brexit (in German), see the [Bundesregierung trifft Vorkehrungen](#).

Also see the [Frequently Asked Questions \(in English\) on the Web site of the Federal Ministry of the Interior, Building and Community: “FAQs on right of residence in the context of Brexit.”](#)

For related draft legislation, see the German Federal Brexit Implementation Act, Brexit-Übergangsgesetz (BrexitÜG).

2 See “[Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as agreed at negotiators' level on 14 November 2018,](#)” on the Web site for the European Commission.

3 For news of the vote, see the Web site of the U.K. parliament “[Government loses 'meaningful vote' in the Commons,](#)” (16 January 2019)

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* Please note that KPMG LLP (U.S.) does not provide any immigration services. However, KPMG Law LLP in Canada can assist clients with U.S. immigration matters.

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