



GMS Flash Alert

Immigration Edition

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Spain – Measures Enacted Assuring Rights, Status in Case of No-Deal Brexit

Spain's government has enacted a Royal Decree-Law that provides for various contingency measures aimed at addressing the residence, immigration, and social security rights of U.K. nationals in Spain and Spanish nationals in the U.K. following the exit of the U.K. from the European Union with no agreement ("no-deal Brexit").

On 2 March 2019, Royal Decree-Law 5/2019 of 1 March 2019, adopting contingency measures in the event of the United Kingdom's withdrawal from the European Union without having reached the agreement provided for in article 50 of the Treaty on the European Union ("the Royal Decree-Law") was published in Spain's Official State Gazette.¹

The new Royal Decree-Law has two core aims: (i) safeguarding the interests of those Spanish and British citizens who exercised their right to free movement; and (ii) safeguarding Spain's trade flows and economic interests.

WHY THIS MATTERS

After Brexit, U.K. citizens will no longer be European Union (EU) citizens and thus will no longer be able to claim residence in an EU or European Economic Area (EEA) member state on the basis of the EU treaty. As a result, they would be subject to rules and conditions similar to those required for third-country citizens in Spain and the rest of the EU. The Royal Decree-Law should help address many of the uncertainties and concerns in respect of U.K. citizens living and working in Spain in the event of a no-deal Brexit and aim to help clarify and assure their residence, immigration, social security, and other rights following 29 March 2019 (the Brexit date).

Context

Because the agreed date for the United Kingdom's effective withdrawal from the EU (in line with the exit procedure provided for in article 50 of the Treaty on European Union ("TEU")) is fast approaching, and the country has yet to ratify

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the Withdrawal Agreement² reached by the negotiators in November, considerable legal uncertainty exists as to what shape the mechanisms governing future EU-U.K. relations will ultimately take.

On the U.K. side, the proposed Withdrawal Agreement was rejected by the British Parliament on 15 January 2019. After some slight amendments, on 12 March 2019, U.K. lawmakers voted 391 to 242 to reject the deal negotiated between the EU and the United Kingdom. Immediately after the result was confirmed the prime minister announced that she intended to proceed as planned with two further series of votes to be held on 13 March and 14 March. The 13 March vote resulted in a majority of members of parliament (MPs) rejecting departure by the U.K. on 29 March 2019 with no deal. The 14 March vote deals with whether MPs favour an extension of the deadline for Brexit beyond 29 March.³

Conclusion of a withdrawal settlement that is satisfactory to both the EU and the U.K. before 30 March 2019 is, therefore, by no means guaranteed. Regardless of whether an agreement is reached and approved, the United Kingdom will cease to be an EU-member on 30 March 2019, unless (i) the U.K. informs the EU that it is revoking its decision to leave, or (ii) the U.K. and the EU agree on an extension to the negotiating period (a step that needs to be approved by all member states and a unanimous vote in the European Parliament).

If exit without a withdrawal agreement occurs, the transitional period of 21 months will not apply and the EU rules will no longer be applicable to U.K. citizens.

Key Points of the Royal Decree-Law

All of the contingency measures adopted are based on the following principles.

Temporary Nature

All of the measures set out in the Royal Decree-Law are classed as temporary in nature. With this in mind, they will cease to apply once the deadlines envisaged in each case have elapsed, or earlier in the event that the domestic or international instruments set to regulate relations with the United Kingdom on the matters contemplated in this legislation are adopted on a permanent basis.

Reciprocity

Moreover, the continued application of some of the scenarios envisaged in the Royal Decree-Law is conditional on reciprocal treatment being granted to Spanish citizens and economic operators by the U.K. authorities.

Thus, express provision is made for the suspension of the measures of the Royal Decree-Law. That will happen in the event that, once two months have elapsed from its entry into force, the competent British authorities have failed to afford reciprocal treatment to Spanish individuals and legal entities in each of the relevant areas.

Measures in Contingency Plan Provided for in the Royal Decree-Law

The measures included in this Royal Decree-Law are manifold and wide-ranging, depending on the sectors concerned. The following discussions focus on some of the important measures that could affect global mobility.

Citizenship

These provisions apply to all U.K. nationals who were resident in Spain prior to withdrawal, and their family members (regardless of their nationality), since such residents will cease to fall under the regime governing EU citizens as soon as the United Kingdom has left the EU, thereafter being subject to the general regime governing foreigners, for which they may not have the relevant documentation.

To this end, U.K. nationals' right to reside in Spain will typically be evidenced in the form of the registry certificate obtained on registration with the central registry of foreigners. In any event, this should have been secured within three months of their arrival in Spain.

Residence

The Royal Decree-Law provides for a comprehensive ad hoc regime for obtaining appropriate documentation concerning the new status of U.K. nationals, which will be mandatory. This measure aims to preclude a scenario in which British citizens and their family members who must formalise their new status as non-EU member third-country nationals suddenly find themselves in an irregular situation.

Applications for this documentation must be filed within 21 months of the date of a no-deal Brexit. Moreover, any U.K. nationals (and their family members) who were resident in Spain prior to the date of withdrawal may obtain a long-term residence permit once they have been legally resident in the country for at least five uninterrupted years.

Registry certificates and family cards will remain valid until such time as they have been replaced by the new documents. Furthermore, with a view to guaranteeing the legal certainty of U.K. nationals and their family members residing in Spain prior to the U.K.'s withdrawal, regardless of whether they had obtained registry certificates or EU family-member cards, it has been confirmed that their residence in Spain will continue to be legal.

Cross-Border Workers

Subject to reciprocity, it has been established that any U.K. national residing outside Spain who, on the date of withdrawal, is classed as a "cross-border worker" (whether as an employee or a self-employed worker) must apply for the relevant documentation evidencing such status, in line with the instructions to be published by the Council of Ministers.

Access to and Pursuit of Professional Activities

Any U.K. nationals who, on the date of the U.K.'s effective withdrawal, are practising a profession or pursuing a professional activity on a permanent basis, having obtained recognition of their professional qualifications for such purpose, may continue to do so on the same terms as those currently recognised, provided they meet all of the other conditions to which such activity is subject. Likewise, the right to continue pursuing a professional activity on a permanent basis in Spain is also recognised for any non-U.K. nationals (including Spaniards) who possess professional U.K. or Gibraltar qualifications that have been recognised.

In addition, any U.K. nationals who, on the date of the U.K.'s effective withdrawal, are practising a profession or pursuing a professional activity on a permanent basis in Spain for which nationality of an EU-member state is required, may continue to do so on the same conditions and without any need to observe additional formalities.

Lastly, anyone practising a profession or pursuing a professional activity in Spain on a temporary or occasional basis is also protected, until the termination of his or her contracts, as are any British professional services firms, in this case for a period of one year (including, inter alia, auditors and audit firms registered on the Spanish Official Register of Auditors).

These measures are for the most part conditional on reciprocal treatment.

Employment Relations

Any company established in Spain that, on the date of withdrawal, has workers on temporary postings to Spain in line with Directive 96/71/EC of 16 December 1996, concerning the posting of workers in the framework of the provision of services, must continue observing relevant U.K. legislation transposing the above Directive throughout the period of posting of such workers.

Social Security

The measures dealing with social security exclusively concern scenarios arising *prior to* the date of the United Kingdom's withdrawal from the EU, and will apply for a period of 21 months as from a no-deal Brexit. Noteworthy examples include:

- Any **U.K. nationals subject to Spanish social security legislation** will continue to enjoy the same rights and obligations in this regard as their Spanish counterparts.
- Subject to reciprocity, any **persons lawfully residing in Spain or in the United Kingdom or Gibraltar, while remaining subject to British or Spanish social security legislation** (as applicable) in line with the provisions of Title II of Regulation (EC) No 883/2004 of 29 April 2004, may retain such status until the period envisaged in the above Regulations has come to an end. Once the above period has elapsed, any U.K. nationals continuing to work in Spain will become subject to Spanish social security legislation.
- Any **U.K. national pensioners dependent on the Spanish social security system and residing outside Spain** on the date of Brexit will continue receiving their contributory pensions and, where applicable, the relevant revaluations after the above date, with the exception of any minimum supplementary benefits.
- **Spanish pensioners dependent on the Spanish system will continue to receive their contributory pensions**, as well as the relevant revaluations and, where applicable, any minimum supplementary benefits to which they may be entitled, even where they reside in the United Kingdom or Gibraltar after the withdrawal.
- Moreover, subject to reciprocity, **any insurance periods recognised in Spain and the United Kingdom prior to the date of withdrawal may be combined** with a view to granting eligibility in Spain and calculating the amount of both contributory pensions in respect of retirement, permanent disability, death, or survival and any such benefits due to temporary disability, maternity, and paternity as may be available.
- The measures included in this section also **state that nationals of the United Kingdom and other member states may qualify for any benefits in respect of unemployment or cessation of activity paid by Spain** for the periods for which pre-withdrawal contributions were made in the U.K., provided the most recent contributions were made in Spain (save in the case of daily commuting to Gibraltar) and during such time as residence is maintained in Spain.

Health-care

It has been expressly provided that, for 21 months from the U.K.'s withdrawal, Spain will continue providing health-care on the same terms and subject to the same conditions as previously applicable to anyone entitled to health-care in the United Kingdom or Gibraltar for the account of the relevant British authorities, provided the United Kingdom guarantees the same conditions for anyone entitled to receive health-care for the account of Spain.

Driving Licenses

Lastly, a transitional period has been set in place for holders of valid driving licenses duly issued by the British authorities so that they may continue driving in Spain. During this transitional period such holders may continue using their license as before, while exchanging their driving license for a Spanish one.

This transitional period will last for nine months as from the date of Brexit, whereupon it will no longer be possible to exchange a license issued by the U.K. authorities for a Spanish one, until such time as the relevant bilateral agreement has been signed.

Holders of U.K. licenses are required to have their habitual residence in Spain.

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FOOTNOTES:

1 *Real Decreto-ley 5/2019, de 1 de marzo, por el que se adoptan medidas de contingencia ante la retirada del Reino Unido de Gran Bretaña e Irlanda del Norte de la Unión Europea sin que se haya alcanzado el acuerdo previsto en el artículo 50 del Tratado de la Unión Europea.* Published in the [Boletín Oficial del Estado, 2 de marzo de 2019, Núm. 53.](#)

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 website for the European Commission.

3 For news on votes and other business in the U.K. House of Commons, see "Commons News" on the [website](#) for the House of Commons.

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