



GMS Flash Alert

Immigration Edition

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Germany – Updates on Rules for a No-Deal Brexit

With the prospect of the United Kingdom exiting the European Union (EU) without a deal becoming increasingly likely – the so-called “no-deal” Brexit – the German government has updated its previously-stated policy which implements mechanisms and procedures in respect of British citizens currently living in Germany or moving to Germany before the Brexit date of 12 April 2019. (For prior coverage, see GMS [Flash Alert 2019-006](#), 17 January 2019.)

The Federal Ministry of Interior recently published updated terms and conditions applicable to people in Germany affected in the event of a no-deal Brexit.¹ The updates include:

- introduction of a longer transition period in case of a no-deal scenario – currently set at 31 December 2019.
- a proposed plan to facilitate easier access to the German labour market and residence permits for British nationals both currently living in Germany as well as those planning to move to Germany after 12 April 2019.

WHY THIS MATTERS

After Brexit, U.K. citizens are no longer 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 and anxieties 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 status and rights following Brexit. This is equally important for German companies that employ U.K. citizens.

Current Context

The British Parliament voted three times against the Withdrawal Agreement² Mrs. May's government had negotiated with the EU.³ The members of Parliament (MPs) have also failed to agree on any indicative votes that would point a way forward.⁴ This means Britain faces leaving the EU without a deal on 12 April – unless it manages to pull together another plan and asks the EU for another Brexit extension.

Updates on Immigration in Case of a No-Deal Brexit

From a German immigration law perspective, the current no-deal situation still 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) are, legally-speaking, "third-country nationals" within the meaning of the Residence Act. Consequently, they have to be treated as such from 12 April 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 stay⁵ will be subject to authorization⁶. Therefore, British citizens who wish to enter and stay in Germany starting 12 April 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 12 April 2019, and are entitled to permanent residence⁷ will not be required to leave Germany immediately in the event of a no-deal Brexit.

The federal government is planning a transitional period until the end of 2019.

More Details on Transitional Period and Tasks and Status of U.K. Citizens

For the subsequent stay, all those affected are requested to submit an application for their respective residence permits to the responsible Immigration Office by the end of the transitional period. During the transitional period, British nationals and their family members continue to have a right of residence. If this right of residence has previously provided access to social benefits or child benefit, that continues. Previous access rights to the health and long-term care insurance remain in place. During the exemption from the requirement of a residence permit, any self-employment or employment is allowed. Continued stay in Germany for the time between the application and the decision of the Immigration Office is deemed permissible. This permission also includes the right to engage in self-employment or employment and social benefits.

Under certain circumstances, the issuance of residence permits will be subject to stricter requirements. The Federal Ministry of Interior undertakes an examination of the necessary framework conditions and keeps in close contact with other countries' governmental authorities responsible for granting residence permits. The goal is that all British nationals living in Germany who are eligible for free movement and their family members can receive a residence permit.

The federal government considers, if necessary, the relevant framework conditions. Among some possibilities, eligible persons who are in Germany ought to receive "privileged" access to the labour market (this has yet to be definitively decided) The U.K. should be included in the list of eligible nationals according to § 26 BeschV – however, this has not been established yet by the government.

All those affected will still be required to apply for a residence permit before the end of the transitional period at their local Immigration Office (*Ausländerbehörde*). They will also be required for purposes of their ongoing residency to register with the resident's Registration Office (*Einwohnermeldeamt*) 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 Immigration Office.

Short-Term Stays

Germany's Interior Ministry has backed EU proposals to allow British nationals to enter the Schengen zone without a visa during short trips. Entry into Germany from the U.K. would generally still be possible for short stays (90 days within 180 days), even in the event of a no-deal Brexit.

KPMG NOTE

Due to Brexit and the concomitant change in entry and residence regulations, there may be delays and inconvenience at the German border. The reason for this is that entry requirements for third-country nationals are more stringent than those for EU citizens entering Germany. There is a general obligation for them to demonstrate the purpose and circumstances of the intended stay (in the framework of border control) and to have or be in a position to provide:

- sufficient means of subsistence for the duration of the intended stay, and
- a return trip to their home country.

In addition, the visa requirement for accompanying family members is based on their own nationality.

The use of semi-automated border controls (EasyPASS) is not possible for the time being.

Naturalization

British and German naturalization candidates who apply for naturalization in Germany or the U.K. before the Brexit date will be allowed to keep their existing British or German citizenship even if the decision on their naturalization is issued after the transitional period, provided that all other naturalization requirements are met before that date.

Applications filed after the Brexit date very 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

These arrangements are an update to the initially-issued guidance for the considerable number of people and companies that will be affected by a no-deal Brexit. The updates and the longer transition period will give individuals and companies more time to prepare for upcoming changes and help facilitate the needs of companies that employ British nationals.

Again, these updated arrangements entail:

- introducing a longer transition period in case of a no-deal scenario – currently set at 31 December 2019;
- a proposed plan to facilitate easier access to the German labour market and residence permits for British nationals both currently living in Germany as well as those planning to move to Germany after 12 April;

KPMG NOTE (cont'd)

- visa-free entry for British nationals for short-term stays up to 90 days (tourist and business visitor purposes).

The longer transitional period should also ease the stress and burdens on families that will be affected by a no-deal situation.

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

FOOTNOTES:

- 1 For more information on the updates in regards of a no-deal Brexit (in German), click [here](#).
- 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 on the U.K. Parliament's website, click [here](#).
- 4 For up-to-date developments concerning the U.K.'s "Brexit" dealings with the EU, please refer to the "European Commission London Office Weekly News Round-up" and other news on the [website](#) of the Representation of the European Commission in the United Kingdom.
- 5 § 2 I, IV, V FreizügG / EU.
- 6 According to § 4 I 1 AufenthG.
- 7 § 4 a FreizügG / EU (Article 16 RL 2004/38).

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