



GMS Flash Alert

Immigration Edition

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Italy – Rights of U.K. Citizens Post-Transition Period: Some Clarity, Some Ambiguity

With less than two months to go to the end of the Brexit transition period on 31 December 2020, Italy's government has still not yet published any official rules regarding the status of British citizens arriving to work in Italy *after* that date. Regulations have been published regarding the status of British citizens resident in Italy *before* 31 December. (For related coverage, see GMS [Flash Alert 2019-054](#), 26 March 2019.)

WHY THIS MATTERS

It is crucial for businesses intending to send employees with British citizenship to Italy on a temporary or permanent basis in 2021 to understand the requirements around documentation and other matters that allow them to reside legally in Italy for work (and family) reasons. Currently, the absence of detailed immigration and administrative procedures can make planning for such moves rather difficult. Added to this is the continued uncertainty regarding the social security status of British citizens seconded to Italy after 1 January 2021.

British citizens who are already in Italy must make sure that by the end of the transition period they:

- are compliant with what current law envisages for them, and
- obtain the necessary documents to prove their legal stay in Italy and secure their rights.

U.K. Citizens in Italy at End of Transition Period

Until 31 December 2020, U.K. citizens can continue to live and work in Italy as they are currently doing.¹ All U.K. citizens currently in Italy for work reasons, and their family members, who live permanently in Italy and who intend to continue

to live in Italy in 2021, before 31 December 2020, must:

- 1 register at the Italian local council in Italy where they live;
- 2 obtain a new document called "*attestazione di iscrizione anagrafica*" from the local council in Italy where they have registered. (This is a very important document for British citizens.)

The registration process is mandatory for stays in Italy longer than 90 consecutive days.²

The "*attestazione*" can be obtained after registration at the local council is complete. Some local councils may apply different rules.

The *attestazione di iscrizione anagrafica* is a document created expressly for U.K. citizens who are or will be registered by the end of the transition period and this document confirms their "protected" status under the Withdrawal Agreement. It is an important document as it refers explicitly to the status of U.K. citizens according to article 18.4 of the Withdrawal Agreement. U.K. nationals living in Italy before 31 December, have a right to the new document. Other documents (for example, the normal certificate of residence) do not refer explicitly to U.K. citizens and the Withdrawal Agreement.³ Therefore, U.K. citizens should be sure that they are in the possession of the right documentation.

Residency Rights

As long as the individual can prove that he was lawfully living in Italy by the end of the year, then the individual's rights will be covered by the Withdrawal Agreement. However, the individual should try to register before 31 December to remove any doubt – registration is the only unequivocal proof.

KPMG NOTE

Individuals should bear in mind the current difficulties in accessing Italian public offices and agencies and the inherent delays relating to the current COVID crisis.

U.K. Citizens in Italy for Less than Five Years and Those in Italy for at Least Five Years

Residency rights will be granted to those citizens who will have complied with the above rules and procedures, by the end of the transition period.

U.K. citizens who have been registered in Italy for **less than five years** will be entitled to a status of temporary residency and, based on this, they will be entitled to continue to accrue the five-year period of residency in order to obtain the status of permanent residency. As residents in Italy, their rights will be protected under the Withdrawal Agreement and they can continue to work in Italy after 31 December without any further restrictions.

U.K. citizens who have been continuously registered at a local council for the **past 5 years or more** can obtain an "*attestazione di soggiorno permanente*" and are considered as "permanent residents." As a permanent resident, rights will be granted as long as an individual spends less than five consecutive years outside of Italy.

Working Rights

U.K. citizens who will be registered at a local council before the end of the transition period and will continue to be registered after its end will be granted the right to continue to perform their work activities as they have been doing. If

they become involuntarily unemployed, U.K. citizens who have been compliant with registration at the local council can retain their worker status for six months. As this is in the scope of the Withdrawal Agreement, this means that U.K. nationals can continue to access unemployment benefits in Italy.

U.K. Citizens Arriving in Italy after 31 December 2020

The Italian authorities have not enacted any official laws nor provided any official guidance regarding the treatment of U.K. citizens coming to Italy for work reasons from 1 January 2021.

From 1 January 2021, it should be possible to travel to Italy for up to 90 days in any 180-day period without a visa for purposes such as tourism or business, according to the normal Schengen rules.

KPMG NOTE

This should mean that U.K. citizens will still be able to make business trips to Italy, for example for meetings, conferences, trade fairs, etc. They will have to take account of the total number of days spent in Italy and the rest of the Schengen Area. They will not be able to undertake paid employment in Italy during that 90-day period. (Confirmation of this is expected to be made clear when official laws are enacted.)

For longer periods, and to enter Italy for employment, it is anticipated that U.K. citizens will require a work permit/visa. This could mean they need to apply for a visa or work permit. They may also need to get a visa if their visit will last more than the 90 days in the 180-days limit.

Length of Residency as a Requirement for Citizenship Application

Residency is a key requirement in order to apply for Italian citizenship. Whereas the procedure for European Union (EU) citizens applying for it requires only four years of continuous official residency in Italy, non-EU citizens must prove 10 continuous years of living in Italy via proper official documents.⁴

Applications filed by U.K. citizens by 31 December 2020, will still be treated as if they were filed by EU citizens and so the four-year period of residence will apply. Applications from U.K. citizens filed after the end of the transition period could be deemed to be made by non-EU citizens, and in this case, the 10-year period of residence would be a requirement.

Social Security

Unless an agreement is reached by 31 December 2020, from 1 January 2021, U.K. citizens seconded to Italy or taking up an employment partly carried out in Italy will become liable to Italian Social Security. Italian Social Security can only be paid by the legal employer, so a U.K. employer assigning employees to Italy will potentially have to register a Social Security position in Italy – meaning they will have to set themselves up as an employer for Social Security purposes, which can be a long and complex process. Of concern will be whether following 1 January 2021, Italians will require apostilled documents from the United Kingdom.

KPMG NOTE

Awareness of Documentation Requirements and Costs for Assignments

U.K. employers would be advised as a precaution to familiarise themselves with the documents likely to be required for Italian Social Security purposes. In cost terms, Italian employer social contributions, at circa 30 percent, are substantially higher than U.K. contributions, and this will have an effect on the cost of assignments to Italy.

Absence of Clarity in Relation to A1s

For employees already in Italy, the position is unclear. Technically these employees should be protected by the Withdrawal Agreement and so their Social Security status should not change. U.K. A1 certificates expiring after 1 January 2021, should continue to be valid and even capable of renewal, providing the employee's circumstances do not change. However, it appears that in practice, the Italian Social Security Authority (INPS) may be regarding U.K. A1 certificates as having validity only until 31 December 2020, with extensions not allowed. This is a controversial policy at variance with the Withdrawal Agreement, so it remains to be seen how the situation develops.

Considerations for Going Forward

Employers will want to plan and schedule assignments to Italy starting in 2021. The current uncertainty regarding proposed immigration rules and Social Security make the planning and costing of future assignments to Italy difficult. It has not yet been determined whether U.K. citizens will be considered as third-country nationals requiring a work permit before entering Italy, an entry visa, and a residence permit once in Italy, or if a special category will be created (as for Swiss citizens and citizens of San Marino, who are not EU citizens but have a very similar status). Employers may be left with little time to obtain the necessary documents to send U.K. citizens to Italy, and the processing time involved can also be slower than normal due to the effects of the continuing COVID-19 crisis.

In the absence of any agreement between the U.K. and EU on social security after 1 January 2021, the worst case scenario could entail Italian contributions being due, involving U.K. employers in potentially long and complex procedures to register for Social Security,

FOOTNOTES:

1 See Foreign & Commonwealth Office, "Guidance: Living in Italy": https://www.gov.uk/guidance/living-in-italy?utm_campaign=transition_p1&utm_medium=cpc&utm_source=seg&utm_content=eut_itukns_act0.

2 *D. Lgs. N. 30 del 6 febbraio 2007 attuativo della direttiva UE 2014/38/CE.*

3 *Circolare n. 3 dell'11 Febbraio 2020. Brexit - Ratifica ed entrata in vigore dell'Accordo sul recesso del Regno Unito e dell'Irlanda del Nord dall'Unione Europea. Istruzioni operative.*

4 *L. 91/1992.*

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