



GMS Flash Alert

Immigration Edition

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Ireland – Impact of Brexit on Irish Immigration

The *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020* (the 'Act') was enacted in Ireland on 10 December 2020.¹ The Act provides further clarifications regarding the status of U.K. citizens in Ireland following the end of the transition period on 31 December 2020.

While there will be no change to the rights of U.K. citizens to work and reside in Ireland following 31 December 2020, a new immigration procedure will be put in place for non-European Economic Area (EEA) family members of U.K. citizens in Ireland.

WHY THIS MATTERS

Employers should note that their U.K. citizen employees will continue to have the right to work and reside in Ireland following 31 December 2020. However, employers should be aware of the upcoming changes to the immigration process for non-EEA national family members of U.K. citizens, as there could be important action steps to be taken to help ensure the smooth continuation/application of U.K. nationals' rights – and those of their EEA family members – and compliance with the rules.

Impact of Brexit on Irish Immigration

The *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020* was signed into law on 10 December 2020. As the end of the transition period approaches, the Act proposes to address issues that could arise for citizens and businesses following 31 December 2020.²

From an immigration perspective, the Act provides important clarifications regarding the status of U.K. citizens in Ireland. The Act amends Section 11(5) of the Immigration Act 2004 such that a citizen of the United Kingdom and Northern Ireland

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(the 'U.K.') does not come within the definition of 'non-national'. This revised definition establishes that the current legal basis for the exemption of U.K. citizens from passport checks within the Common Travel Area between Ireland and the U.K. will continue to apply. For the avoidance of doubt, the Act also identifies U.K. citizens as including citizens of the Channel Islands and the Isle of Man.

KPMG NOTE

While the Immigration Service Delivery ('ISD') has advised that EU Treaty Rights permission will no longer be available to non-EEA family members of U.K. citizens from 1 January 2021 as outlined below, the Irish authorities have yet to confirm what the impact of Brexit will be on other Irish immigration permissions including Van Der Elst Permission (available to non-EEA nationals who are employed and resident in one EU country and assigned to work in another EU country) and the Short-Term Visa Waiver Programme (available to certain non-EEA nationals on short-term immigration permission in the U.K.).

Guidance for Non-EEA Family Members of U.K. Citizens Living in Republic of Ireland

The ISD published guidance for non-EEA family members of U.K. citizens living in the Republic of Ireland on the basis of an EU immigration permission ('EU Treaty Rights'). The guidance aims to address issues that these non-EEA nationals may have in proving a number of legal rights, including the right to live and work in the Republic of Ireland, as a result of Brexit.

Whilst the rights of U.K. citizens will not change as a result of Brexit, the rights of their non-EEA dependent family members may be impacted. Non-EEA family members of U.K. citizens who are as of 31 December 2020 exercising EU Treaty Rights and who hold a valid Irish Resident Permit may avail of a new Irish Residence Permit 'card exchange programme' to allow them to continue to rely on their EU Treaty Rights after the end of the transition period.

From 1 January 2021, non-EEA family members of U.K. nationals may no longer apply to avail of EU Treaty Rights permission. A new pre-clearance immigration scheme for such non-EEA family members who intend to live and work in the Republic of Ireland after this date is expected to be introduced, details of which will be announced in the coming weeks.

KPMG NOTE

Employers should note that there will be no impact on the rights of their U.K. citizen employees to live and work in Ireland; however, it is important for employers to be aware of the new requirements for non-EEA family members of U.K. citizens. In particular, any non-EEA employees currently employed on EU Treaty Rights permission on the basis of being family members of U.K. citizens, will need to participate in the 'card exchange programme' to help ensure their permission to work is maintained.

For advice on this changing situation, please contact your local qualified immigration counsel or the Corporate Immigration and Employment Law Team with KPMG in Ireland (see the Contact Us section).

FOOTNOTES:

1 See the legislation in bill form on the website of the Houses of Oireachtas at: <https://www.oireachtas.ie/en/bills/bill/2020/48/> .

2 For related coverage of Brexit and the Withdrawal Agreement and immigration matters for U.K. nationals in other countries, see our other Brexit reports in GMS *Flash Alert* at: <https://home.kpmg/xx/en/home/insights/2015/09/flash-alert-brexit.html>.

For more on the EU-U.K. Withdrawal Agreement, see: https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/eu-uk-withdrawal-agreement_en.

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Contact us

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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.*

The information contained in this newsletter was submitted by the KPMG International member firm in Ireland.

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