



GMS Flash Alert

Immigration Edition

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Netherlands - Update on Brexit Withdrawal Rules for U.K. Citizens' and Family Members

In anticipation of a possible "no-deal" Brexit, the Deputy Minister of Justice and Safety of the Netherlands has published withdrawal rules for citizens of the United Kingdom and their family members who lawfully reside in the Netherlands on March 29, 2019. These provide for transitional rules applying until June 30, 2020, followed by final rules.¹

In GMS [Flash Alert 2019-004](#) (January 11, 2019), we reported on the transitional rules. In today's GMS *Flash Alert*, we discuss the expansion of these rules with a provision for cross-border workers and provide further information about the implementation of the transitional rules.

WHY THIS MATTERS

To supplement the previously-announced transitional rules for U.K. citizens and their family members who lawfully resided in the Netherlands before Brexit, there are now also transitional rules for U.K. *cross-border workers* in the event of a no-deal Brexit. The rules mean that cross-border workers will be able to continue to work in the Netherlands during the transitional period, subject to conditions, without requiring a work permit.

At This Stage - Context

The date for Brexit was originally set for March 29, 2019, and was recently extended. Currently, the Brexit Withdrawal Agreement² has not been approved by the U.K. Parliament. The U.K. House of Commons voted on 14 March 2019, in favor of delaying the U.K.'s departure from the EU beyond March 29, 2019. European Union leaders agreed to an extension until April 12, 2019, and a further extension to May 22, 2019, if Parliament votes to accept the Withdrawal Agreement.³

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.

Businesses and people affected by Brexit should (continue to) prepare for a no-deal Brexit.

No-Deal Rules for Cross-Border Workers

As noted above, cross-border workers will be able to continue to work in the Netherlands during the transitional period, subject to conditions, without requiring a work permit. The conditions are as follows:

- The individual must have been working in the Netherlands as a cross-border worker on the official Brexit date;
- He or she must have a valid employment contract showing that his or her activities in the Netherlands will also continue after Brexit;
- He or she must live in the United Kingdom (have his or her principal residence there) and return to the U.K. on average once a week;
- He or she must have a valid U.K. passport.

If the individual meets these conditions, it is important that he or she visit the Immigration and Naturalization Service (INS) after Brexit and apply, in person, for a *residence endorsement sticker*. This is a sticker that the INS inserts in the person's passport. The sticker is required if an individual wishes to take advantage of the work permit exemption and employers should keep a record of it. The sticker will include the following statement: "U.K. cross-border worker, employment permitted. Work permit not required" and is valid for the entire transitional period, thus until June 30, 2020.

KPMG NOTE

Lack of Clarity and Recently-Announced Delay in Issuing of Stickers

The INS has not stipulated how someone can prove that he was already working in the Netherlands as a cross-border worker before March 29, 2019. Nor is it clear what conditions an employment contract must comply with and whether, for example, the contract must specifically state that (some of) the work takes place in the Netherlands.

Following the recent delay of Brexit, the INS has now published that it is not yet possible to apply for the sticker – but that this is only possible after Brexit. It's expected that this time will be used to further develop the conditions for the sticker.

Starting Work as a Cross-Border Worker after Brexit

The work permit exemption does not apply to cross-border workers who only start working in the Netherlands after Brexit; they will need a work permit. Whether the conditions for obtaining a work permit are met will have to be assessed on a case-by-case basis. A work permit application can be filed with the UWV (the Dutch Employee Insurance Agency); a statutory deadline of five weeks applies to the processing of applications.

Transitional Rules in Practice

Temporary Residence Permit

In anticipation of a possible no-deal Brexit, the INS will send all U.K. citizens who are registered with a Dutch municipality (and thus will fall under the transitional rules) a written statement confirming their right of residence. This letter is the "*temporary residence permit*" and is an important legal document as it proves one's lawful residence in the Netherlands.

The temporary residence permit will then be valid during the transitional period that runs until June 30, 2020. Please note that the document is only valid in combination with a valid passport.

As Brexit is now delayed, U.K. citizens should keep the document until further notice in the event of a no-deal Brexit at a later stage.

After a no-deal Brexit, individuals must provide their employers with a copy, which is to be kept in the personnel file. They must also carry the temporary residence permit with them, along with their U.K. passport, when traveling to and from the Netherlands.

Family Members

Family members of U.K. citizens who do not have EU/EEA or Swiss nationality will also receive a temporary residence permit. They must also be able to provide the (expired) EU residence document upon request and should therefore keep both documents in a safe place.

U.K. Citizens with Permanent Residence Permits; Those with Dual EU/EEA Nationality

U.K. citizens in possession of a permanent residence permit on March 29, 2019, can also lawfully reside in the Netherlands after Brexit by virtue of this permit and there is therefore no reason to issue them with a temporary residence permit. U.K. citizens with dual nationality of another EU/EEA member state have the right to reside in the Netherlands after Brexit by virtue of their "second" nationality. Temporary residence permits will therefore not be issued to them.

Final Rules

The transitional period will be used to issue Dutch residence permits to U.K. citizens who apply for them so that they can also continue to reside in the Netherlands after the transitional period. This permit will be issued under the same conditions that currently apply for residence as an EU citizen; thus no new or stricter conditions will apply.

KPMG NOTE

In order to be able to process the large numbers of applications efficiently, it is important that individuals wait until they receive a letter from the INS inviting them to apply for a residence permit and not to file the application on their own initiative. The INS will make sure that everyone receives this letter by April 1, 2020 at the latest.

U.K. Citizens Who Intend to Live in the Netherlands after Brexit

In the event of a no-deal Brexit, U.K. citizens who intend to live in the Netherlands after Brexit can at that time apply for a residence permit under national law, such as a highly-skilled migrant permit or a residence permit for study. They are not required to possess an authorization for temporary stay (*machtiging tot voorlopig verblijf*; MVV), which means they can travel to the Netherlands without a special visa to settle in the country.

The eligibility conditions for a residence permit will need to be assessed on a case-by-case basis.

FOOTNOTES:

1 See the official publication (in Dutch) of the new rules in *Staatscourant van het Koninkrijk der Nederlanden* (the official journal of the Netherlands) by clicking [here](#).

For additional information, visit the no-deal Brexit website of the Dutch government by clicking [here](#) (for Dutch) and [here](#) (for English).

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 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 U.K.](#)

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Contact us

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