



GMS Flash Alert

Immigration Edition

2020-449 | November 4, 2020



Spain – Brexit: Immigration Procedures for British Citizens

This GMS *Flash Alert* provides an update on the current Spanish immigration procedures for British citizens in relation to Brexit and its effect in Spain¹.

On 31 January 2020, the United Kingdom ceased to be a member state of the European Union (EU) and its exit is regulated by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (hereinafter "Withdrawal Agreement" or "Agreement") negotiated and ratified by both parties.² This Agreement entered into force on 1 February 2020.

However, this Agreement establishes a transitional period that will last, in principle, until 31 December 2020. During the transitional period, EU legislation on free movement will continue to apply. Consequently, as determined in the second part of the Agreement (relating to the rights of citizens), all rights will remain in place until 31 December 2020, as if the United Kingdom were still a member of the European Union. This implies that U.K. nationals will be able to enjoy their right of free movement in Spain until the end of 2020.

WHY THIS MATTERS

The new procedures for British citizens can affect employers and their globally-mobile employees – especially business travellers – doing business in Spain.

Assignments to Spain by British nationals and hiring new personnel with British citizenship, until 31 December 2020, are not expected to experience delays due to the new rules and procedures, however, there could be some administrative barriers due to delays at the immigration offices, mainly in Madrid and Barcelona, which are related to the difficulties of securing appointments at local police stations for ID-cards (and where ID-cards may be obtained, there may be errors on some of these cards that need to be corrected).

Assignments to Spain by British nationals and hiring new personnel with British citizenship, *from 1 January 2021, are*

© 2020 KPMG Abogados, S.L., a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved. Printed in the U.S.A. NDPPS 530159

the next challenge, because until the negotiations between the U.K. and the EU are completed, it is impossible to determine whether Britons will be considered the same way new Swiss nationals are, or, on the contrary, they will be considered as third-country nationals, similar to citizens of Australia, the People's Republic of China, Israel, Mexico, Nigeria, Russia, Serbia, etc.

New Immigration Procedures for Britons

Once the Withdrawal Agreement has come into force, the following regimes are as indicated below:

- **Europeans³**: The regime for citizens of the EU, provided for in Royal Decree 240/2007, of 16 February on entry, free movement, and residence in Spain of citizens of the member states of the EU and of other States party to the Agreement on the European Economic Area;
- **U.K. nationals until 31 December 2020⁴**: The regime applicable to nationals of the United Kingdom, their family members, and any other persons included in the scope of application of the Withdrawal Agreement, who will be subject to its provisions (that is, the application of EU law in matters of free movement);
- **Third-country nationals** to whom the so-called general immigration regime will apply and which includes U.K. nationals who are not beneficiaries of the Withdrawal Agreement.

Therefore, those who have exercised their right to reside or work in accordance with EU law before the end of the transitional period and continue to do so after that period, will have exactly the same rights under the Withdrawal Agreement as people who have arrived before Brexit, and are also subject to the same restrictions and limitations.

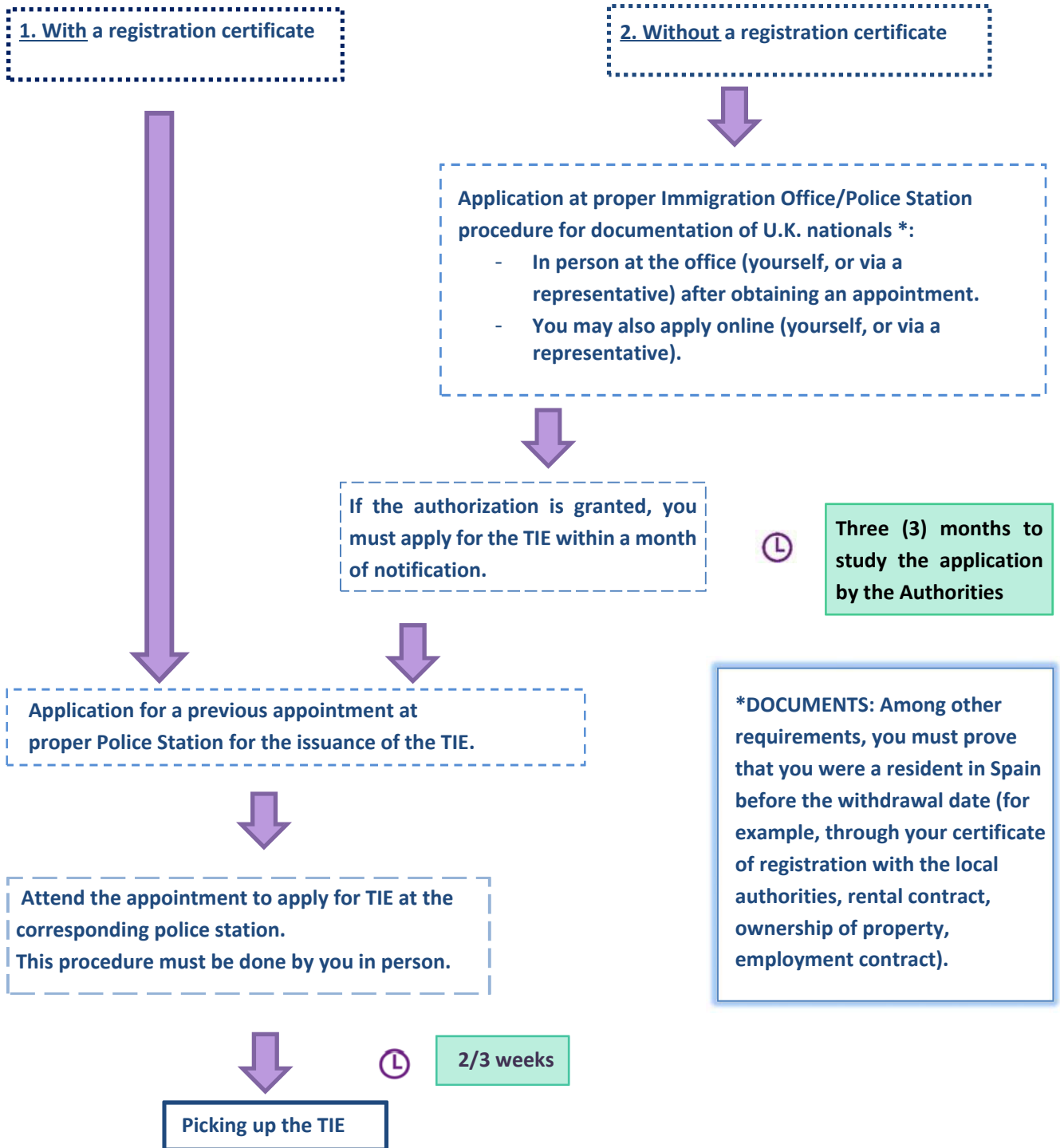
British Nationals Who Are Beneficiaries of the Withdrawal Agreement: New ID-Card

Nationals of the United Kingdom, the members of their families, and any other persons residing in Spain in accordance with the conditions established in the Agreement, will not have the obligation to request new resident status or submit, therefore, to a new documentation process, but they will have the right to receive, in accordance with the provisions of Directive 2004/38, a residence document expressly stating their status as a beneficiary of the Withdrawal Agreement.

In addition, in accordance with Article 19 of the Withdrawal Agreement, this residence document can be requested, voluntarily, during the transitional period. Based on this and to avoid double petitions, a system has been set up in which requests for registration certificates or residence cards of a relative of an EU citizen that are made during the transitional period by those nationals of the United Kingdom, the members of their families, and any other people residing in Spain in accordance with the conditions established in Title II of the Agreement, will be understood and processed as requests for this residence document of Article 18.4 of the Agreement.

Within this group there is an important difference between those U.K. nationals (i) with a registration certificate (U.K. nationals with the Certificate of Registration of European Union: Green document (DIN-A4 format of ID-card shaped)) with their Number of Identification as Foreigner on it (NIE- *numero de identificacion de extranjeros*); and (ii) without a registration certificate (U.K. nationals without that document).

How Does One Obtain That New ID-Card (*TIE- tarjeta de identidad de extranjero*)?



Source: KPMG Abogados, S.L.– Spain

U.K. Nationals Who Are Not Beneficiaries of the Withdrawal Agreement

Those who arrive after the end of the transitional period will not benefit from the same rights provided by the Withdrawal Agreement, being then considered third-country nationals and, without prejudice to the application of a special future mobility regime, will be subject to the provisions of the foreigners general regime (*Regimen General, ley 4/2000*).

KPMG NOTE

Any questions or concerns should be directed to your qualified professional adviser or a member of the GMS/People Services team with the KPMG International member firm in Spain.

FOOTNOTES:

1 For information, in Spanish and English, on measures taken and policies implemented regarding Brexit, please visit: <http://www.interior.gob.es/web/servicios-al-ciudadano/brexit#Residencia> .

2 For related coverage of Brexit and the Withdrawal Agreement and immigration matters for U.K. nationals, 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.

3 For information, in Spanish, on EU citizens' procedures, please visit: <http://extranjeros.inclusion.gob.es/es/InformacionInteres/InformacionProcedimientos/CiudadanosComunitarios/index.htm> .

4 For the original in Spanish of the *Resolución de 2 de julio de 2020, de la Subsecretaría, por la que se publica la Instrucción conjunta de la Dirección General de Migraciones y de la Dirección General de la Policía, por la que se determina el procedimiento para la expedición del documento de residencia previsto en el artículo 18.4 del Acuerdo de Retirada del Reino Unido de Gran Bretaña e Irlanda del Norte de la Unión Europea y de la Comunidad Europea de la Energía Atómica*, please visit: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-7276 .

* * * *

Contact us

For additional information or assistance, please contact your local GMS or People Services professional* or one of the following professionals with the KPMG International member firm in Spain:



Miguel Arias

Partner

Tel. + 34 91456 3864

marias@kpmg.es



Javier de Robles

Senior Manager

Tel. + 34 91 451 3189

jderobles@kpmg.es



Patricia Contreras

Associate

Tel. + 34 3491 456 3400

patriciacontreras@kpmg.es

** 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 Spain.

© 2020 KPMG Abogados S.L.P., a professional limited liability Spanish company and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

www.kpmg.com

kpmg.com/socialmedia



© 2020 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. Printed in the U.S.A. NDPPS 530159

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

KPMG LLP is the U.S. firm of the KPMG global organization of independent professional services firms providing Audit, Tax and Advisory services. The KPMG global organization operates in 147 countries and territories and has more than 219,000 people working in member firms around the world.

Each KPMG firm is a legally distinct and separate entity and describes itself as such. KPMG International Limited is a private English company limited by guarantee. KPMG International Limited and its related entities do not provide services to clients.

Flash Alert is a GMS publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click here. To learn more about our GMS practice, please visit us on the Internet: click here or go to <http://www.kpmg.com>.