



GMS Flash Alert

Employment Law

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Switzerland – Brexit: Hiring U.K. Nationals in 2021

With respect to the United Kingdom’s (U.K.) exit from the European Union (EU), Switzerland has been implementing its “mind the gap” strategy¹, which aims at a smooth continuation of the existing partnership between the U.K. and Switzerland. The governments of the U.K. and Switzerland, in the run-up to Brexit, have sought to avoid legal gaps and ambiguities about applicable law and regulations that apply in terms of U.K. nationals moving to and working in Switzerland and being hired in Switzerland, as at 1 January 2021.

The strategy consists of several bilateral agreements, such as the Swiss-U.K. Citizens’ Rights Agreement governing the rights of U.K. nationals living in Switzerland and vice versa.

WHY THIS MATTERS

As it is unlikely that the need for skilled labour will diminish over the next years, several aspects regarding hiring and relocating U.K. nationals will become important considering the EU regulations will no longer apply to U.K. citizens in less than a few weeks.

To foster business continuity, help assure U.K. nationals currently in Switzerland and those planning to come to Switzerland to take up work – as well as their U.K. citizen family members – and foster compliance with the rules, understanding the practical implications, population affected, budgetary impact, compliance process timelines, and related risks will be essential.

Background

On 23 June 2016, the United Kingdom’s electorate voted on withdrawal from the EU. As a result, on 31 January 2020, the U.K. left the EU. The withdrawal of the U.K. marked the beginning of a transition period which is to last until 31

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December 2020. During this transition period, the bilateral agreements between Switzerland and the EU continue to apply to the United Kingdom.

Ten Urgent Questions Companies in Switzerland Should Ask from a Swiss Immigration Perspective

1. What was agreed in the Swiss-U.K. Citizens' Rights Agreement?

The Swiss-U.K. Citizens' Rights Agreement secures the rights acquired before the end of the transition period by Swiss citizens in the U.K. (and vice versa).

As Switzerland is not a member state of the European Union, it is not a party to the withdrawal negotiations and any future agreement between the U.K. and the EU will not cover these aspects. Switzerland and the U.K. have therefore negotiated and established their bilateral agreement regarding their respective citizens' rights.²

The main areas covered by the Swiss-U.K. Citizen's Rights Agreement are the following:

- Right of exit and entry;
- Right of residence for persons pursuing an economic activity;
- Right of residence for persons not pursuing an economic activity;
- Family reunification;
- Cross-border commuters;
- Rights of persons providing services;
- Prohibition of discrimination on grounds of nationality;
- Purchase of immovable property;
- Coordination of social security systems;
- Mutual recognition of professional qualifications.

2. What actions must be taken by U.K. citizens who already live and work in Switzerland and hold a valid Swiss permit?

U.K. citizens residing in Switzerland with a valid residence permit (i.e., holders of a short-stay, residence, cross-border commuter permit, or permanent residence) obtained under the Agreement on the Free Movement of Persons (AFMP), i.e., before 31 December 2020, generally do not need to take any action. However, they may be requested to exchange their current permit for a biometric one, but this will not affect their current right to remain in Switzerland. In case they are not informed that they need a different permit, they must simply apply for a new permit prior to the expiry date of their current permit by way of filing the "Verfallsanzeige," i.e., expiration notice, as usual.

3. What is the process for hiring U.K. citizens on a local Swiss employment contract after 31 December 2020?

From 1 January 2021, U.K. citizens must meet the terms of the *Foreign Nationals and Integration Act* (FNIA) and

therefore will be treated like any other non-EU/European Free Trade Association (EFTA) citizen who wants to relocate to or work in Switzerland, unless an additional bilateral agreement between Switzerland and the U.K. is concluded.

As a result, this will mainly have the following implications:

- Labour market testing/priority given to Swiss and EU employees: in order to hire a U.K. national locally, a Swiss employer would need to prove that no suitable EU or Swiss national could be found after running authentic recruitment efforts for at least four weeks. However, several months ago, the Swiss authorities indicated that they may well consider waiving this requirement for U.K. nationals.³ A final confirmation, however, is still pending.
- Quota: as per 2021, each U.K. national will be subject to a quota. The Swiss Federal Council has created separate quotas (similar to the quotas for Croatian nationals) which are going to be distributed quarterly to the cantonal authorities as follows: °
 - Separate quotas totaling 3,500 for 2021;
 - B-Permits: 2,100 per year;
 - L-Permits: 1,400 per year.

(For related coverage, see GMS [Flash Alert 2019-070](#), 5 April 2019.)

- Work and residence permit application: U.K. nationals will need to submit an application to the migration authorities, which needs to be approved before taking up residency and work in Switzerland.

KPMG NOTE

At the moment, the cantonal authorities are still waiting for further information from the Swiss Federal Council on the exact process for U.K. citizens as of 1 January 2021. However, it is expected that U.K. citizens will be treated similarly to other non-EU/EFTA citizens from 1 January 2021 on. The KPMG International member firm in Switzerland expects that U.K. nationals will have to file a relatively lean work permit application and only be eligible for a permit if they are highly qualified (university degree or high specialisation).

As a more exact process for U.K. nationals can only be expected towards the beginning of December 2020, we recommend collecting all documentation necessary in order to be prepared in case a formal application were to become necessary. However, starting work in early January 2021 – i.e., in the first week(s) of January 2021 – may even turn out to be impossible given the uncertainty regarding some aspects of Brexit and the narrowing window of time left to clarify them during the remainder of 2020.

Most cantonal authorities have already confirmed⁴ that applications for U.K. citizens who will be hired on a Swiss local employment contract or an assignment contract may already be filed, but that they can only be processed once the exact process applicable to U.K. citizens has been confirmed by the Swiss Federal Council and the related quotas have been released (i.e., 1 January 2021).

4. Can U.K. citizens still make use of the online notification procedure for up to 90 days within a calendar year after the transition period?

Different to the government's indication earlier this year, the Swiss federal agency announced in a communication on

4 December 2020⁵ that there was an agreement approved between Switzerland and the U.K. on the mobility of service suppliers. The agreement is currently restricted to two years; however, the contracting parties may jointly decide to extend the duration.

In regard to the use of the online registration tool, this has the following impact:

- Companies located in the U.K. may still send their employees to Switzerland to provide services for up to 90 days in a calendar year using the online notification procedure. Following, employees can be registered as:
 - EU/EFTA-citizens and U.K. citizens employed in the U.K.;
 - Non-EU/EFTA citizens and U.K. citizens employed and living in the U.K. or in an EU/EFTA member state for at least 12 months prior to the notification.

KPMG NOTE

It needs to be considered that the agreement only covers the provision of services from companies in the U.K. to Switzerland. Consequently, U.K. citizens with a Swiss employment contract may still not make use of the online notification after December 2020. Additionally, further clarification is expected on the situation of U.K. citizens living in another EU/EFTA country.

5. Can U.K. nationals still move to Switzerland and be registered by the end of 2020?

As the EU regulations are still applicable to U.K. nationals until end of 2020, they are entitled to obtain a work and residence permit in Switzerland if they move to Switzerland by 31 December 2020. The permit received will be considered acquired rights and will be renewed under EU regulations as long as they remain registered in Switzerland. Any acquired rights will cease to exist in case of a de-registration from Switzerland. U.K. nationals moving back to Switzerland after that date will be subject to the FNIA procedure.

6. How will moving to Switzerland on a Swiss local employment contract impact the income tax position?

Brexit will not impact the personal income tax position of a local Swiss hire. Based on the double taxation treaty (DTT) between Switzerland and the U.K., the employee will typically be subject to income tax in the country where the work is performed. If a single individual moves to Switzerland or if a married individual moves to Switzerland with his or her spouse on a Swiss local employment contract, then they will become full tax residents of Switzerland and be subject to Swiss income tax rules. Potential U.K. tax liabilities may still arise; however this is where the rules to avoid double taxation come into play. In this case, this would typically lead to the crediting of Swiss income tax to overall U.K. income tax liabilities.

7. Will I still have to pay U.K. social security contributions if employed locally by a Swiss employer after Brexit?

The social security rules for Swiss local hires will not change after Brexit. Therefore, if an individual moves to Switzerland on a Swiss employment contract, this individual will be subject to Swiss social security based on residency and place-of-work principles. If the individual does not move to Switzerland but maintains U.K. residency after local employment in Switzerland, then it is possible – if certain conditions are met – that the individual will remain subject to U.K. social security. If the individual is hired in Switzerland before the transitional rules apply on 31 December 2020, the

status quo applicable before 31 December 2020 is maintained. If the individual is hired locally in Switzerland after 31 December 2020 whilst maintaining residency in the U.K., a splitting of social security contributions between U.K. and Switzerland is likely, based on the work-day split.

8. Will U.K. nationals need a visa to enter Switzerland?

With the revision of the EU's regulations, U.K. citizens are exempted from visa requirements for the Schengen Area for short stays up to 90 days even after 31 December 2020.

KPMG NOTE

KPMG has further been informed by the competent visa section of the State Secretariat for Migration that U.K. and British Overseas citizens will not require an entry visa for stays beyond 90 days (e.g., when relocating to Switzerland or 120-day work permits).

Lastly this means that U.K. nationals may not exceed a stay of 90 days within any period of 180 days in the whole Schengen Area as they may risk a penalty and entry restrictions at the border in case of an over-stay.

9. Do family members of U.K. nationals need to provide proof of language proficiency certificates after the end of 2020?

The requirements for a family reunification application will only be regulated by the provisions of the FNIA five years after the AFMP ceases to apply, i.e., after 31 December 2025.

Therefore, family members will not be required to meet the language requirements. This also means that family members of U.K. nationals will still be able to benefit from the privileged process for family reunions under the EU regulations until the end of December 2025, even if the FNIA rules already apply for the main applicant.

10. What is the best way to stay informed on any updates in regard to the new regulations?

The KPMG immigration team is in constant contact with the state secretary of migration of Switzerland and will do its utmost to stay informed on any developments. Once the pending questions are clarified, we will make sure to share the information on our different media channels (GMS *Flash Alert*, social media, client mailings, etc.). In case companies have a general query or even a specific case, they are advised to contact their qualified tax professional or a member of the immigration team and/or employment law team with KPMG in Switzerland (see the Contact Us section below).

FOOTNOTES:

1 For more on the "mind the gap" strategy (in English), see: https://www.eda.admin.ch/dam/dea/en/documents/fs/FS-Brexit_en.pdf . Also, for prior coverage, see GMS [Flash Alert 2019-035](#), 26 February 2019.

For a FAQs on Switzerland's policies pertaining to U.K. nationals pre-Brexit and post 31 December 2020, see: <https://www.eda.admin.ch/countries/united-kingdom/en/home/representations/embassy-in-london/embassy-tasks/political-affairs/brexit-faq.html> .

FOOTNOTES continued:

2 See “U.K. and Switzerland sign citizens’ rights agreement” at: <https://www.gov.uk/government/news/uk-and-switzerland-sign-citizens-rights-agreement> .

3 Based on informal discussions between officials with the State Secretariat for Migration and the cantonal offices for migration and representatives of the KPMG International member firm in Switzerland.

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5 See federal agency’s press release on 4 December 2020 “Switzerland – UK: Federal Council approves Agreement on mobility of service suppliers” at: <https://www.admin.ch/gov/en/start/documentation/media-releases/media-releases-federal-council.msg-id-81467.html> .

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Contact us

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