

# GMS Flash Alert

## Immigration Edition

2021-063 | February 25, 2021



# Spain - Extension of Travel Restrictions, Immigration Procedures for British Citizens

This *GMS Flash Alert* provides an update on travel restrictions, quarantine and the new immigration procedures for British nationals in Spain.

With the new EU-U.K. Trade and Cooperation Agreement between the United Kingdom and European Union (including Article SERVIN 4 on business travellers) pending validation, the Spanish authorities approved measures that include provisions affecting cross-border workers.<sup>1</sup>

Spanish authorities also extended through 28 February 2021 the temporary restrictions placed on non-essential travel from certain countries to the European Union and Schengen associated countries for public health reasons due to the health crisis caused by COVID-19.<sup>2</sup>

Additionally, there are flight limitations and restrictions on travel from the U.K., South Africa and Brazil until 2 March, with quarantines for international travellers coming from Brazil and South Africa; and the resumption of border controls between Portugal and Spain (until 1 March).

For prior coverage, see [GMS Flash Alert 2020-510](#) (23 December 2020).

## WHY THIS MATTERS

The travel restrictions will affect employers and their globally-mobile employees – especially business travellers – doing business in Spain in terms of disruption, inconvenience, new procedures and requirements, and changes to travel plans.

Assignments to Spain by British nationals are the next challenge, because until the negotiations between the U.K. and the EU were completed, it was not certain that Britons would be considered third-country nationals. Even with that determined, there are still more agreements to be made on this matter.

However, now that the U.K. is outside the EU, in many areas, British nationals will be subject to rules and practices that the EU applies to other third-country nationals.

# New Immigration Procedures for British Citizens from 1 January

From 1 January 2021, the U.K. has officially left the EU Single Market and Customs Union and is no longer party to EU policies and international agreements. On that date, the free movement of persons, goods, services and capital between the U.K. and the EU ended.<sup>3</sup>

## Intra-company Work Permit (Article SERVIN 4) and Posting Workers

The new EU-U.K. Trade and Cooperation Agreement negotiated by the United Kingdom and European Union established the activities in which short-term business visitors are permitted to engage; implying that for those activities listed a work permit should **not** be necessary.<sup>4</sup>

The Spanish authorities continue to study how to develop the Article SERVIN 4 of the agreement.

However, the Spanish government approved Royal Decree-Law 38/2020 on 29 December, which is in force from 1 January 2021, and establishes measures for various areas, from financial services to driving licences, through approval of degrees or research activities, and including social security and labour relations. We highlight below the transitional regime applicable to workers temporarily posted in the framework of the provision of services. The Royal Decree-Law establishes several scenarios in Article 6 for intra-company movements, although the previous measures continue to stand.<sup>5</sup>

The scenarios are the following:

### a) Spanish companies with posted workers in the U.K. or Gibraltar:

- Article 6.1: Companies established in Spain that on 1 January 2021, have workers temporarily posted to the United Kingdom or Gibraltar in accordance with Directive 96/71 / EC, of the European Parliament and of the Council, of 16 December, on the posting of workers carried out in the framework of a provision of services, must continue to apply the legislation of the United Kingdom that has implemented the Directive during the period of their posting.
- Article 6.2: This provision will only be applicable in the event that the competent authorities recognise reciprocal treatment for workers who are temporarily posted to Spain by companies established in the United Kingdom or Gibraltar in accordance with Directive 96/71/EC.

### b) U.K. or Gibraltar companies with posted workers in Spain:

*Displacement prior to 31 December 2020:*

- Article 6.3: Workers of companies established in the United Kingdom or in Gibraltar who have been posted to Spain in the framework of a provision of services prior to 31 December 2020, as of 1 January 2021, may remain in Spain for the provision of the service until the end of the expected duration of the posting that was communicated to the corresponding labour authority. It will not be necessary to obtain a prior residence and work authorisation.

The provisions of this section are subject to the granting of reciprocal treatment by the competent authorities, in the terms provided in article 3.1 of the Royal Decree-Law.

*Extension of a posting started before 31 December 2020:*

- Article 6.4: In those cases, in which, having started the posting before 31 December 2020, it is necessary to extend the initially-planned duration, the individual must obtain a prior residence and work authorisation, in

accordance with the provisions of the immigration regulations, but will not have to obtain a visa. This authorisation will be requested by the company established in Spain in favour of the displaced worker and the national employment situation will not apply.

*Displacement as of 1 January 2021:*

- Article 6.5: Workers of companies established in the United Kingdom or in Gibraltar who are posted to Spain as of 1 January 2021, must obtain the mandatory visas or residence and work authorisations provided for in the Spanish immigration regulations without prejudice to the commitments that are assumed within the framework of an eventual agreement between the European Union and the United Kingdom.

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## KPMG NOTE

Spain is still considering the possibility of future agreements on these matters; but for the moment, this Royal Decree entered into force on 1 January 2021, and therefore the above-described rules apply.

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## New Extension of Travel Restrictions

The restrictions on non-essential trips will be in effect until 28 February 2021 at 24:00. (Many continue to expect that another extension will happen.) The notification of an extension is typically officially published in the *Boletín Oficial del Estado* two days before the end of the previous one, as this one was published on 30 January in the morning.

This order follows the European Commission Recommendation and there is a list of countries and special administrative regions whose residents are not affected by the temporary restriction.

Currently, there are eight (8) countries in that category: Australia, New Zealand, Rwanda, Singapore, South Korea, Thailand, and the People's Republic of China (along with China's Special Administrative Regions: Hong Kong SAR and Macao SAR).

It is notable that no mention is made of British citizens as a new exception. As indicated above with the end of the Brexit transitional period on 31 December 2020, they are no longer recognised as beneficiaries of the EU's freedom of movement. Therefore, British nationals that do not meet the travel restrictions criteria are not be able to travel to Spain (Schengen area) from 1 January.

Besides the travel restrictions on non-essential travellers and the health measures still in place,<sup>6</sup> there are flight limitations for international travellers from the following countries:

Brazil and South Africa (Flight limitations and quarantine) –

- Flight limitations: Until 18:00 (peninsular time) on 2 March 2021 (possible extension).<sup>7</sup>
- Quarantine: 10 days for all international travellers coming from Brazil and South Africa starting from 28 February for 14 days (possible extension).<sup>8</sup>

United Kingdom (Flight limitations, no quarantine)<sup>9</sup> –

- Until 18:00 (peninsular time) on 2 March 2021 (possible extension as well).

Portugal and Spain have decided to resume border controls until 01:00 (peninsular time) on 1 March 2021 (possible extension).<sup>10</sup>

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## KPMG NOTE

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

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## FOOTNOTES:

- 1 For the Spanish *Real Decreto-ley 38/2020, de 29 de diciembre*, please visit: [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2020-17266](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-17266). For the EU-U.K. Trade ad Cooperation Agreement, see footnotes 3 and 4.
- 2 For the Spanish Order (*Orden INT/1278/2020, de 29 de diciembre*), please visit: [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2020-17273](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-17273).
- 3 For more on the new EU-U.K. Trade and Cooperation Agreement, see [Press corner | European Commission \(europa.eu\)](#).
- 4 For more details on the new EU-U.K. Trade and Cooperation Agreement, see [Draft EU-U.K. Trade and Cooperation Agreement | European Commission \(europa.eu\)](#) [https://ec.europa.eu/info/sites/info/files/brexit\\_files/info\\_site/tca-20-12-28.pdf](https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/tca-20-12-28.pdf).  
Also see: [https://ec.europa.eu/info/files/eu-uk-trade-and-cooperation-agreement-new-relationship-big-changes-overview-consequences-and-benefits\\_en](https://ec.europa.eu/info/files/eu-uk-trade-and-cooperation-agreement-new-relationship-big-changes-overview-consequences-and-benefits_en).
- 5 For related coverage of Brexit and the Withdrawal Agreement and immigration matters for U.K. nationals, see our earlier report in [GMS Flash Alert 2020-449](#), 4 November 2020.
- 6 For related coverage Health Measure, see our earlier report in [GMS Flash Alert 2020-459](#), 16 November 2020.
- 7 For the Spanish Order (*Orden PCM/118/2021, de 11 de febrero*), please visit: <https://www.boe.es/eli/es/o/2021/02/11/pcm118>.
- 8 For the Spanish Order (*Orden SND/133/2021, de 17 de febrero*) please visit: <https://www.boe.es/eli/es/o/2021/02/17/snd133>.
- 9 For the Spanish Order (*Orden PCM/118/2021, de 11 de febrero*), please visit: <https://www.boe.es/eli/es/o/2021/02/11/pcm118>.
- 10 For the Spanish Order (*Orden INT/98/2021, de 8 de febrero*), please visit: <https://www.boe.es/eli/es/o/2021/02/08/int98>.

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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 Spain.**

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