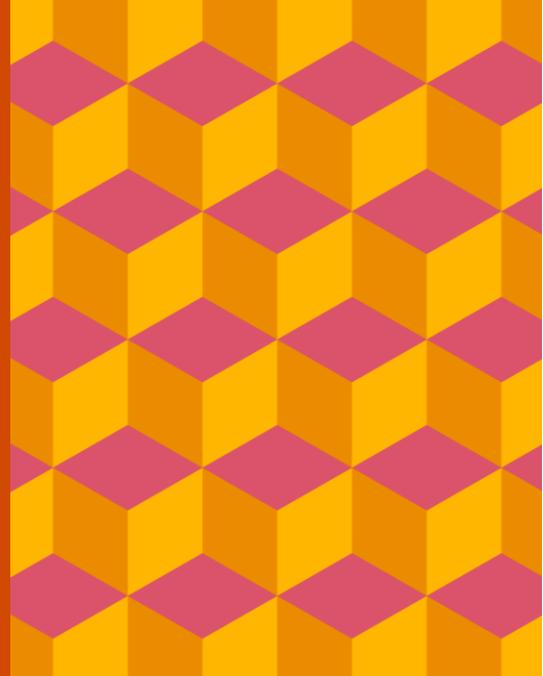


Brexit: a new immigration context



PwC assess the new scenarios for British residents in Spain, those planning to settle in the country in the future and companies intending to post or hire British citizens in Spain

9 October 2020

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On 4 July, a set of new joint instructions were published by immigration authorities and Spanish police. These rules establish new immigration formalities in order to adapt the Spanish immigration legal framework to the UK-EU Withdrawal Agreement.

Brexit took formally place back on 1 February. However, the UK and the Union agreed to set a transition period from the signature of the UK's Withdrawal from the EU Agreement until 31 December 2020. During this period, EU Member States (MS) have get prepared to regulate the immigration status of (i) British nationals in the EU that had already settled before 1 February 2020; (ii) those citizens that settle in a MS of the EU during the transition period; and (iii) individuals from the UK willing to move to a MS to reside and work after 31 December 2020.

Considering this context, the Spanish Government and the pertinent immigration authorities ("Dirección General de Migraciones") have established a legal framework based on the art. 18.4 of the UK's Withdrawal from the EU Agreement. This implies, mainly, that those British nationals and their relatives that have settled in Spain, will not be required to apply for a new residence permit..

However, the Spanish Government has also established a new residence card compulsory for British citizens and their relatives that settled in Spain between 6 July and the end of the transition period on 31 December. Those having started their residence in Spain before 6 July, holding the certificate of registration as EU citizen in Spain (the "NIE green card") can also apply for a change in order to get the new residence permit for British nationals in Spain, despite of this action is not mandatory.

All in all, the above implies three different scenarios for British nationals in Spain – one of the EU countries that hosts a large number of British immigrants:



In practice, this implies three different scenarios for British nationals in Spain – that may vary according to the settlement date of the British citizen in the country.



To sum up:

- A new residence card has been established for British citizens and their relatives that settle in Spain before the effective Brexit date.
- It is highly advisable for British nationals currently holding a NIE-EU card to apply for the new residence card for citizens from the UK in Spain.
- British citizens and their relatives intending to settle in Spain from 1 January 2021 onwards shall obtain a residence and work permit.

1. British citizens (and their relatives) who had already settled in Spain before 6 July 2020:

Individuals under this status will be able to keep residing in Spain as it has been the case up to now.

In any case, following the immigration authorities practice, it is highly advisable to apply for the new ID card for British residents in Spain, changing the “NIE green card” for this new ID document, in the extent that it may be compulsory in the future to proceed with such exchange – and administrative procedures could be slower as the workload would be more sizeable than for the time being.

This also applies to relatives of British citizens from a non-EU country.

2. British citizens (and their relatives) who have settled in Spain after 6 July, but before 31 December 2020:

It is needed to apply for the new ID card for British residents in Spain, which is different to the certificate of registration as EU citizen in Spain (“NIE green card”).

It is important to highlight that those British nationals that settle in Spain before the end of the transition period (31 December 2020), in the event that they cannot obtain the ID card for British citizens before 31 December, shall provide evidence of their residence status.

3. British citizens (and their relatives) planning to settled in Spain from 1 January 2021 onwards:

This is the most challenging scenario, as it brings remarkable changes regarding the new immigration status of British citizens in Spain. As result of Brexit, and as stated by the UK's Withdrawal from the EU Agreement, British citizens and their relatives that settle in Spain after 31

December 2020 will be considered as third-country nationals. Freedom of movement and provision of services will not apply, then, for citizens from the UK. According to Spanish immigration law, individuals from a non-EU MS shall obtain a residence or work permit in order to reside or work in the country.

The implications of the aforementioned scenarios are both unknown and uncertain for a number of British nationals and their relatives already settled in Spain that may wonder which immigration status will apply after Brexit. This uncertainty affects Spanish companies too, as they seek British talent to join their work centres in Spain, or plan to assign EU workers to the UK in order to develop their international projects in the islands.

Conversely, it is unlikely that the triple immigration scenario described above can be sustainable in the middle-long term and it is foreseeable that immigration rules for British nationals end up in a sort of unification.

This is also one of the reasons why it is advisable, for those British citizens (and their relatives) settled in Spain and provided with the “NIE green card” to obtain the new ID card as soon as possible. Both documents grant the same rights to their holders and it is possible, as mentioned before, that this change may be compulsory in the future. As per previous experiences in Spain with massive regularizations of the status of foreigners in the country, the earlier the process is completed, the less likely is that the foreign applicant suffers delays, long processing times and, in broader terms, frustration when trying to get his or her legal immigration status resolved

However, the main stopper for business and British employees in Spain will be the requirement for British citizens to obtain a work permit before starting to provide the service in the country. This, along with the expected growth of immigration files handled by the authorities during the first semester of 2021 and the scarce resources of the Spanish immigration public administration, can end up in difficulties for companies planning to hire / host British employees in Spain after 1 January 2021.

Furthermore, as the work permit approval, when necessary, is required before the job activities start, international assignments and hiring of British nationals by Spanish companies will be more slower processes by far.

Plus, in certain cases, the obligation of being provided with a work and residence permit could provoke a cancellation of the international assignment or hiring of a British employee in Spain, due to the impossibility for the company, the individual - or both - to meet the requirements. Criteria to apply for a work permit is generally restrictive (i.e. salary thresholds, limitation to certain job positions, requirements for the company – which takes part actively in the work permit application process, as long as in most of the immigration processes the legal responsibility relies on the hiring entity rather than the individual - to sponsor a work permit, etc.), which is diametrically opposed with one of the main features of the EU: freedom of movement and provision of services.

Conclusions.

To summarize, it is a key point for their business that companies are aware of this evolving scenario – the changes discussed in this publication are not an exhaustive list nor a detailed legal analysis – and, most importantly, that HR teams understand the implications of Brexit for their British employees, expats policies and ongoing displacements and projects to come.