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# BREXIT – CLIENT INFORMATION ON LABOUR LAW CHANGES AND RESTRICTIONS

May 2021

## DEAR CLIENTS,

The withdrawal of the United Kingdom (UK) from the EU results in far-reaching changes and restrictions under employment law for business trips or long-term work deployment periods spent by UK citizens in Germany and German citizens in the UK. As of 1 January 2021, UK citizens are no longer treated as EU citizens but as third-country citizens. In other words, free movement of employees between the UK and the rest of Europe no longer applies. Such employees therefore require an appropriate residence and work permit. Employers must ensure that their

employees are issued with the appropriate documents which entitle them to work in the EU.

Section I. of this information letter gives an overview of the main changes and explains what must be observed in future when UK employees spend any periods of time working in Germany and German employees spend time working in the UK. Section II. then sets out the special regulations which apply to UK/German citizens who are already working in Germany/the UK on the cut-off date of 31 December 2020.

## I. SIGNIFICANT CHANGES SINCE 1 JANUARY 2021

As from 1 January 2021, UK nationals working in Germany and German citizens working in the UK must abide by the visitor rules on entry for short-term business trips and obtain appropriate visas regarding work and residence certification prior to entry for longer work stays. Essentially, the following rules apply:

### German citizens in the UK:

- German citizens wishing to work in the UK must apply for a work visa - e.g. „long-term work visas“, such as „skilled worker visas“, „short-term work visas“ or „investor, business

development and talent visas“. They are granted through a points-based system, in which factors such as qualification, length of stay, level of income and type of industry are relevant. For more information, please refer to <https://www.gov.uk/browse/visas-immigration/work-visas> and [https://www.gov.uk/check-uk-visa/y/germany/work/longer\\_than\\_six\\_months](https://www.gov.uk/check-uk-visa/y/germany/work/longer_than_six_months).

- Short business trips/visas to the UK are possible without a visa in two instances: (i) if you are invited as an expert for a „Permitted Paid Engagement“ - i.e. a German citizen can stay in the UK for up to 1 month without a visa if he/she is paid by a UK-based organization to provide services such as giving guest lectures at a university, participating in artistic, entertainment and sporting activities,

etc., or (ii) if you are entering the country for certain business activities but are not actually working in the UK (e.g. German citizens may stay in the UK for up to 6 months without a visa to attend conferences, seminars, negotiations, job inter-views, to sign contracts or attend trade fairs). For further information please visit: <https://www.gov.uk/permit-ted-paid-engagement-visa>.

### UK citizens in Germany:

- UK citizens who wish to work in Germany on a long-term basis require a residence title („Aufenthaltstitel“) for the purpose of gainful employment (e.g. visa to work for skilled workers, EU Blue Card), which must be applied for at

the Aliens' Registration Office („Ausländeramt“) at the place of residence in Germany. The exact requirements for the issuance of the work permit vary and essentially depend on the vocational qualifications and their recognition in Germany, which makes a general assessment impossible. If you wish to take up gainful employment immediately upon entering Germany and prior to obtaining a residence permit, you must obtain a visa from the German Consulate which entitles you to work. We are happy to answer any individual questions you may have. You can also find further information on this subject at <https://www.make-it-in-germany.com/en/visa/quick-check>, <https://uk.diplo.de/uk-en/02/information-on-brexite/brexit-information-faq?openAccordionId=item-2425346-2-panel> and



<https://www.arbeitsagentur.de/en/german-labour-market>.

- Short business trips/entries to Germany of up to 90 days in a period of 180 days (without taking up gainful employment) can be made without a visa. You may use this time to apply for a residence permit.

## II. GRANDFATHERING UNTIL DECEMBER 31, 2020 AND BEYOND

Under the withdrawal agreement, UK citizens in the EU and German citizens in the UK were treated as if the UK were still a member state of the EU until 31 December 2020 (this was the so-called transition period). This grandfathering arrangement continues to apply to employees who worked in Germany or the UK up to the cut-off date of 31 December 2020 and who continue to work there. Their status is regulated as follows:

### German citizens in UK

- German citizens who live and work in the UK beyond January 1, 2021, or who are assigned to the UK on business for an extended period of time, must register for the „EU Settlement Scheme“ by 30 June 2021, in order to obtain a residence/work permit (this is known as „pre-settled“ status). This secures their work permit rights beyond 30 June 2021.
- German citizens who have already lived in the UK for five years by 31 December 2020 (cut-off date), can also register in the UK and apply for an unlimited residence and work permit („settled“ status) up to 30 June 2021.
- The UK Visas & Immigration (UKVI) is responsible for all visa matters. For more information,

please see the following links: <https://www.gov.uk/contact-ukvi-inside-outside-uk> and <https://www.gov.uk/settled-status-eu-citizens-families/what-settled-and-presettled-status-means>.

### UK citizens in Germany

- UK citizens may continue to work in Germany without restriction if they remain in Germany (or another EU state) until the end of the transition period and beyond. Because their main place of residence was Germany until 31 December 2020 and beyond, they are „entitled to freedom of movement“ under the Withdrawal Agreement (e.g., if they have an employment relationship, are self-employed, or have not been seeking work for more than six months). They must still report their place of residence to the Aliens' Registration Office which is responsible for their place of residence by June 30, 2021 at the latest. The Office will then issue them with the newly created „Residence Document-GB“.
- UK citizens living in Germany at the end of the transition period as posted workers who are providing a service and who continue to live in Germany may be granted a right of residence in individual cases – for example if they have sufficient health insurance cover and means of support. If such posted workers do not fall under the Withdrawal Agreement, they can remain in Germany until 31 March 2021 and continue to engage in their previous activity, but they must apply for a residence permit under German national residence law beforehand if they intend to reside in Germany beyond 31 March 2021.

- UK citizens who have commuted to work in Germany on the basis of an employment relationship even before 1 January 2021 (so-called “cross-border commuters”) and will continue to work beyond this date (a posting to provide a service is not sufficient for this) can apply for the so-called „Residence Document



for Cross-Border Commuters – GB” at the Foreigners Authority of the place of work and may then continue to work (but not live) in Germany. Therefore, if a move to Germany is planned after 1 January 2021, a residence title in accordance with the Residency Act (Aufenthaltsgesetz) will be required. Please refer to the following link for further information: [https://www.bmi.bund.de/SharedDocs/faqs/EN/topics/constitution/brexit/faqs-brexit.html?sessionId=7A438A118D9880CEABD835120908E5E2\\_2\\_cid364](https://www.bmi.bund.de/SharedDocs/faqs/EN/topics/constitution/brexit/faqs-brexit.html?sessionId=7A438A118D9880CEABD835120908E5E2_2_cid364)

## III. CONCLUSION

Within the Brexit framework, the transitional arrangements have created easier rules for workers on both sides of the Channel to continue to work and live in each other's countries. For all others who now want to work in the UK or Germany for the first time, the applicable regulations are essentially the same as for all other third-country nationals. The regulations governing the granting of work permits in individual cases are complex and require an individual examination of each individual case to assess the specific effects which Brexit will have on business companies and the deployment of their employees in the UK and the EU.



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