

A go-to guide if your staff are working in Europe (including Switzerland) now and into 2021

PART 2

As the Brexit transition period ended on 31 December 2020, it's never been more important for organisations to consider the impact of free movement ending for workers who are based in Europe and Switzerland.

We'd like to share our Part 2 go-to guide with contributions from leading lawyers. If your organisation has staff working in Europe (including Switzerland), this is a 'must-read' for you.

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Contents

- 3 **Austria**
By Petra Pardatscher
- 4 **Belgium**
By Massimo Maesen
- 5 **Croatia**
By Tomislav Pedišić
- 6 **Czech Republic**
By Veronika Plešková
- 7 **Denmark**
By Tommy Angermair
- 8 **Finland**
By Jani Syrjänen
- 9 **France**
By Stephane Coulaux
- 10 **Germany**
By Dieter Kohlfürst
- 11 **Ireland**
By Alicia Compton
- 12 **Italy**
By Marco Mazzeschi
- 13 **Malta**
By Dr Jean-Philippe Chetcuti
- 14 **Netherlands**
By Bram van Melle
- 15 **Poland**
By Karolina Schiffter
- 16 **Portugal**
By Adriana Goulart Spanholi
- 17 **Spain**
By Mounia Jrabi
- 18 **Sweden**
By Jonas Lindblad
- 19 **Switzerland**
By Nina Perch-Nielsen

Austria

Options available to British nationals or staff of UK companies based in Austria after 1 January 2021

UK nationals who have already been residing in Austria before 31 December 2020 and intend to do so thereafter will be required to obtain a new residence permit in 2021 (a so called 'Article 50 TEU' permit). They will continue to have free access to the Austrian labour market.

The application for the new permit can be submitted in person in Austria from 1 January 2021 until 31 December 2021 and – in the case of employees – must include a confirmation of employment. The new residence permit is valid for 5 years (or 10 years for UK nationals who have already obtained the right to reside permanently in Austria).

UK nationals who take up residence in Austria after 31 December 2020 are not covered by the Withdrawal Agreement and will be treated as third-country nationals regarding visa/residence and work permit requirements (exceptions apply to certain dependants).

In principle, the following applies for UK nationals taking up residence in Austria after 31 December 2020:

- For a stay of up to 6 months, a work visa and a work permit is required.
- For a stay of more than 6 months, a residence permit and a work permit is required, e.g. Red-White-Red cards for skilled workers, EU Blue Cards or ICT-Permits, which are combined residence and work permits.

Working remotely in Austria after 1 January 2021

UK nationals who have already been residing in Austria before 31 December 2020 can apply for the 'Article 50 TEU' permit in 2021 and are entitled to continue to stay in Austria and to work remotely in Austria for a UK company.

UK nationals who take up residence in Austria after 31 December 2020, and who work remotely in Austria for a company based in the UK, require a residence permit and a work permit according to the general Austrian rules for third-country nationals. It should be noted that there are limited options of residence and work permits available for this group of remote workers. If, however, the remote worker is a dependant of a UK national who holds an Article 50 TEU permit, they can also apply for an Article 50 TEU permit, stay in Austria and work remotely for a UK company. There are also residence and work permits available for remote workers who are dependants of EEA citizens or third-country nationals living in Austria with a residence permit.

In general, residence in Austria requires comprehensive social and health insurance cover in Austria. This requirement must also be fulfilled if a remote worker remains on a foreign payroll. Moreover, the taxation requirements must be checked.

Part 1 key points: What organisations needed to know before 31 December 2020

- UK nationals who have been residing in Austria before 31 December 2020 will be required to obtain a new residence permit in 2021 ('Article 50 TEU' permit) with free access to the Austrian labour market.
- UK nationals who take up residence in Austria after 31 December 2020 will be treated as third-country nationals regarding visa/residence and work permit requirements (exceptions apply to certain dependants taking up residence after 31 December 2020).
- The transition period is also crucial for the legal status of remote workers in Austria. Moreover, tax, social and health insurance requirements have to be checked in detail for remote workers.



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Belgium

Options available to British nationals or staff of UK companies based in Belgium after 1 January 2021

As of 1 January 2021, UK frontier workers will have to apply for a Work Permit B as a frontier worker (valid for 1 year, and renewable) and obtain an Annex 15 as a frontier worker with the town hall relevant to their place of work in order to cover their stay in Belgium.

Third-country nationals can come to Belgium for business trips for 20 consecutive days, or 60 calendar days per year. No work authorisation is required.

Regarding local hire, UK nationals will have to apply for a single permit as a highly qualified employee or executive (the most common procedure) or a Blue Card. The permit can be issued for up to 3 years and is renewable.

Alongside the options available for a local hire, it is expected that UK nationals on assignment to Belgium can apply for the EU ICT permit as of the beginning of 2021 (assignment from an employer outside of the EU to a branch of the same company within the EU). This permit type can be issued for up to 3 years maximum (for managers and specialists – 1 year for trainees). Prior employment of 3 months is required (6 months in Brussels).

Working remotely in Belgium after 1 January 2021

With the new legislation passed in January 2019, it is no longer possible to assign a non-EU/EEA national to Belgium, without the actual presence of a company or a client in Belgium. For EU nationals this was never a problem, as they are work permit exempt, and the presence of an entity or client is one of the conditions for obtaining work authorisation. Therefore, working remotely in Belgium would no longer be possible for UK nationals if they have no presence in Belgium.

In the new regional legislation, the wording is clear. Secondment is the temporary posting of an employee for the performance of work on behalf of a foreign employer for a user established in the specific Belgian region. The requirement of having an end-user in Belgium is strict. Without an end-user, you cannot work in Belgium as a non-EU/EEA national, so remote work would not be an option.

When it comes to UK nationals already legally residing in Belgium before 1 January 2021, they should be able to continue enjoying their rights as before. It should therefore not be a problem for them to continue working remotely if required.

Part 1 key points: What organisations needed to know before 31 December 2020

- UK nationals already residing and working in Belgium need to make sure they have obtained a residence card E (they will be invited to request an M card; and assess their eligibility for permanent residence or Belgian citizenship).
- UK frontier workers (with a Belgian employment contract) already working in Belgium before 31 December 2020 should make sure they obtain an Annex 15 with the town hall relevant to their place of work (they will receive an N card). They will be allowed to continue working in Belgium without a work authorisation after 31 December 2020.
- UK frontier workers (with UK employment contracts) already working in Belgium before 31 December 2020 are not considered beneficiaries of the Withdrawal Agreement and will require work authorisation to continue working after 31 December 2020.



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Croatia

Options available to British nationals or staff of UK companies based in Croatia after 1 January 2021

From 1 January 2021, British citizens can travel to Croatia for up to 90 days in any 180-day period without a visa for purposes such as tourism. This is a rolling 180-day period. To stay for longer, e.g. to work or study in Croatia, British citizens will need to obtain a work/temporary residence permit.

Croatia recently abolished the annual quota system for so-called blue-collar workers. Therefore, an employment quota is no longer set by the government. Before employing a foreigner, Croatian employers are obliged to request a test of the labour market from the Croatian Employment Service.

Regardless of Brexit, staff of UK companies in Croatia can use many available options to work and reside in Croatia, such as: internal transfer of personnel; obtaining a work permit based on a work agreement with the Croatian subsidiary of a British company; working for up to 90 days per year with a so-called work certificate; and obtaining a work and temporary residence permit etc.

Working remotely in Croatia after 1 January 2021

On 1 January 2021, Croatia introduced digital nomad visas by amending its Foreigners Act. A digital nomad is defined as a “third-country national who is employed or performs business through telecommunication technology for a company or their own company that is not registered in the Republic of Croatia, and does not perform business or provide services to employers in the Republic of Croatia.” The new Foreigners Act regulates new grounds for temporary residence for “digital nomads” as a new category of third-country nationals who can reside in Croatia. Foreign citizens who apply for temporary residence in Croatia need to show to the local authorities that they:

1. Can prove the purpose of their stay in Croatia
2. Are in possession of a valid passport
3. Have secured a means of living (salary or similar)
4. Have adequate health insurance
5. Can prove that they have not been sentenced for a crime in their own country or a country in which they have lived for more than a year before arriving in the Republic of Croatia
6. Do not have restrictions of entry into the Republic of Croatia
7. Do not pose a threat to the Republic of Croatia.

Part 1 key points: What organisations needed to know before 31 December 2020

- Croatian Parliament is expected to enact amendments to the Law on EEA Member States Citizens and Members of Their Families before 31 December 2020 to regulate the status of British citizens in Croatia after Brexit.
- We advise all British nationals to regulate their residence status in Croatia as soon as possible if they plan to live in Croatia for more than 3 months. British nationals who live in Croatia (e.g. based on the family reunification with Croatian citizens) before the transition period ends on 31 December 2020, will be able to stay in Croatia – i.e. they will keep their existing right of approved stay.
- Businesses can use the UK's VAT Mini One Stop Shop (MOSS) to declare sales of digital services to Croatian consumers made before 1 January 2021.



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Czech Republic

Options available to British nationals or staff of UK companies based in the Czech Republic after 1 January 2021

The options depend on the desired length of stay in the Czech Republic and the type of employer. The most common options are direct employment, business trips and the posting of an employee:

- **Direct employment:** the individual is hired, paid and managed by a Czech employer
- **Business trip:** the individual is hired, paid and managed by their UK employer but sent, on a temporary basis, to the Czech Republic to conduct work on behalf of the UK employer
- **Posting:** the individual is hired and paid by the UK company but sent to another employer in the Czech Republic to work temporarily

If the individual has not had any residency history in the Czech Republic before the exit date, they would be considered third-country nationals. Depending on the nature of their stay, they would need either an employee card, blue card, or a combination of a work and residency permit.

As the Czech immigration system is a paperwork-heavy and time demanding process, UK Nationals should plan their relocations in advance (i.e. for stays shorter than 90 days, at least 2 months ahead, for stays beyond 90 days, at least 5 to 6 months ahead). COVID-19 related restrictions may extend the overall immigration process.

Working remotely in the Czech Republic after 1 January 2021

Working remotely has become increasingly common since the start of the COVID-19 pandemic. However, the provisions of the Czech Labour Code do not really simplify such a form of cooperation, mainly because:

- An agreement on working remotely must be made in writing (an employee cannot be forced to use their home for work and remote work often means a change of the employment contract, which must be made in writing by law). The circumstances and requirement of wet ink signatures complicate matters.
- When working remotely, it is the employer who is primarily liable for occupational safety and health.
- The employee must receive compensation for usage of their personal property and resources to carry out their work.
- The level of admissibility of digitalisation of employment law-related documents is, unfortunately, still quite low. This complicates disciplinary procedures or dismissal.

From an immigration law perspective, remote work does not trigger any issues or administrative steps for an employer to make towards the authorities.

A significant shift can occur if the employee would like to work remotely from the UK (or any other country). Depending on the length of remote work, the employee's presence in the UK while being employed by a Czech employer could trigger the following issues:

- Duty of the employer to pay statutory taxes and contribute to the social security system on behalf of the employee in the UK.
- Creation of a permanent establishment of the Czech company in the UK (i.e. negative tax implications).
- Consideration of the activity of the Czech company in the UK (through the employee) as illegally doing business in the UK.

Although remote work is not automatically excluded, one should pay attention to the arrangement in light of the above possible risks and consult professionals in the affected fields.

Part 1 key points: What organisations needed to know before 31 December 2020

- If you have been employing a UK citizen already based in the Czech Republic before the exit date, nothing would change for you after 31 December 2020. However, please make sure your employee has applied for issuance of a certificate of temporary residence or another residency document.
- The eligible individual can apply for the confirmation or other residency document at any time before or after the exit date. Needless to say, the sooner the better.
- If you wish to hire a UK citizen with no provable residency history in the Czech Republic before 31 December 2020, you must consider them third-country nationals.



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Denmark

Options available to British nationals or staff of UK companies based in Denmark after 1 January 2021

From 1 January 2021, UK nationals not residing in Denmark on 31 December 2020 will be considered third-country nationals and will have to apply for a residence and work permit.

1. Work under 'fitter-rule'

If the fitter-rule applies, employees can simply travel to Denmark and start working immediately. Foreign nationals posted to work as fitters, consultants and instructors in Denmark are exempt from requiring a work permit for a period of no more than 3 months from entry. For the fitter rule to apply, each employee must be employed to fit, install, maintain, repair, or instruct in the use of machines, equipment, computer programs, or other technical systems.

The applicant must be employed in or affiliated with the company supplying the imported product. If the applicant is employed by another company, the company supplying the product must have entered into an agreement with the employing company supplying the fitting. Ordinary construction and craft work is not covered by the fitter rule.

2. Apply for work permit under Fast-Track Scheme

If the Danish employer is certified by the Danish Agency for International Recruitment and Integration (SIRI), employees can start working in Denmark almost immediately after submitting the work permit application.

3. Apply for work permit under the Positive List scheme

Employees who have been offered a job on the list of professions experiencing a shortage in the Danish labour market can obtain a work permit based on this scheme. There are two lists – one for highly educated and one for skilled workers. The processing time for obtaining a residence and work permit under this scheme is 1 – 2 months.

4. Apply for work permit under Pay-limit scheme

This option will be relevant if the annual salary of the employee is at least 436,000 DKK (c. £53,000). The processing time for obtaining a residence and work permit under this scheme is normally 1 – 2 months. Employees are not allowed to commence working before the work permit is granted.

Working remotely in Denmark after 1 January 2021

The Danish Working Environment Act also applies to remote work. Employers have responsibility to ensure the employer has suitable working conditions at home. The employer's insurance also covers employees working remotely, but only covers damages incurred in connection with the work.

Remote work is associated with certain additional data privacy and confidentiality considerations that should also be considered and addressed. If the employee is required to work remotely, it must be considered if this change in place of work implies a significant change in the employment terms and conditions. If the change is significant, it requires notice with at least the same

length as the ordinary notice of dismissal or employee consent. Assuming the relocation does not entail such material change, then no specific procedure will be required by Danish employment law. If a detrimental significant change is implemented without consent, the employee may decide to consider themselves dismissed, in which case normal rules apply. Implementing a detrimental significant change without notice or consent amounts to breach of the employment contract by the employer, which entitles the employee to resign without notice and claim damages.

Employers are encouraged to implement a remote work policy to demonstrate the employer's focus on addressing legal issues accordingly.

Part 1 key points: What organisations needed to know before 31 December 2020

- All British citizens and their family members residing in Denmark before 1 January 2021 must apply for a new residence document before 1 January 2022, even those with permanent residence rights in Denmark. Existing rights regarding residence, work etc. are maintained while the application is being processed.
- Applications are to be submitted to the Agency for International Recruitment and Integration (SIRI). The new residence document serves as proof that the holder has a right of residence under the Withdrawal Agreement. SIRI will issue the new residence documents without fees or other costs. Until the new document is issued, bringing existing residence documents issued under EU-rules ('EU-registreringsbevis'/'EU-opholdskort') when travelling to and from Denmark is recommended for the purpose of border checks.
- As of January 2021, UK nationals not residing in Denmark on 31 December 2020 will be considered third-country nationals. They are required to apply for a residence and work permit to the same extent as other non-EU/EEA member state nationals.



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Finland

Options available to British nationals or staff of UK companies based in Finland after 1 January 2021

The permit required for British nationals as of 1 January 2021 onwards depends on the length of the stay of the British national as well as on the date on which the British national arrives or has arrived in Finland.

For short-term stay, as of 1 January 2021, it is possible for a British national to reside in Finland in for a maximum of 90 days in a 180-day period without a visa or residence permit. Other days spent in the Schengen area are included in this quota.

For long-term stay, a residence permit is usually required if the British national arrives in Finland on or after 1 January 2021. The British national should apply for a residence permit in the same manner as other persons coming from non-EU countries.

If a British national has arrived in Finland before 31 December 2020, and wants to continue to reside in Finland, they should apply for changing the right of residence under EU citizenship to a right of residence under the Withdrawal Agreement. In some cases, the British national may apply for a right of residence directly under the Withdrawal Agreement. Both applications must be done by 30 September 2021.

Working remotely in Finland after 1 January 2021

Remote work has not been regulated in Finnish employment legislation. Therefore, the general employment rules apply also to employees working remotely. Remote work should always be agreed between the employer and the employee, especially in cases of permanent remote work.

It should be noted that the employer is equally responsible for health and safety when the employee is working remotely. In addition, the employer is responsible for work-related injuries and accidents. In Finland, occupational accidents are typically covered by mandatory occupational accident insurance which usually provides cover for accidents that have happened in the course of work. Where the employee is injured at home but not when working (e.g. if the employee is injured while getting coffee), the insurance will most likely not cover the accident unless the employer has separate remote work insurance.

It is not possible for the employer to monitor the working conditions when the employee is working remotely compared to monitoring the working conditions of an in-office employee. It is important to communicate to the employee that any potential safety risks must be reported immediately to the employer when working remotely. Furthermore, the employee and the employer should agree on the terms of remote work and any possible compensations and/or working equipment compensated by the employer in the remote work agreement.

Key points from Part 1: What organisations needed to know before 31 December 2020

- If a British national has arrived in Finland before 31 December 2020 and wants to continue to reside in Finland after that day, the registration under EU citizenship should be changed to residence under the Withdrawal Agreement by 30 September 2021.
- If the British national arrives in Finland after 31 December 2020, a residence permit is usually required.
- As of 1 January 2021, it is possible for the British national to reside in Finland for a maximum of 90 days during a 180-day period without a visa or residence permit. Other days spent in the Schengen area are included in the quota.



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France

Options available to British nationals or staff of UK companies based in France after 1 January 2021

British nationals over the age of 18 residing in France before 31 December 2020 must apply online for a residence permit before 1 July 2021. Possession of this residence permit will be compulsory from 1 October 2021, including for those holding a residence permit marked 'EU'.

- Those who have been living in France for 5+ years will be eligible for a 10-year residency card. Those who have been living in France for less than 5 years will be eligible for a 5-year residence permit upon evidence of their personal situation as a worker, student, job seeker, British family member, British spouse of a French national, etc.
- British family members of British nationals already living in France prior to 31 December 2020 and arriving in France after 31 December 2020 will be eligible to a free visa and residence permit upon their arrival.

British nationals arriving in France from 1 January 2021 will be treated as any non-EU national:

- They will be allowed to travel visa-free for short stays (up to 90 days in any 180-day period) but may require a prior work permit approval if the purpose of the travel is to work.
- For stays beyond 90 days, they will need to meet the entry requirements set out by France (applying for a long-stay visa and, where applicable, a work permit).

Working remotely in France after 1 January 2021

Any individual working remotely in France must be aware of the following:

- Individuals must be registered by their employer with the French social security authorities ('URSSAF') and have a French payroll/French pay slips.
- Their employer is responsible for the payment of the French social security contributions pertaining to this employment.
- If the employer is not a French-based entity, the employing entity must register with the URSSAF authorities as a foreign entity, unless the workers are posted workers on a non-French payroll benefiting from a social security certificate of coverage.

Any British national who was not a resident in France before 31 December 2020 and aims to work remotely in France will be required to apply for an appropriate visa and/or work permit. In most cases, the French labour authorities in charge of processing work permits deny a work permit application when the employer is a foreign company wishing to keep the employee on its foreign payroll without having an establishment or branch registered in France, i.e. the situation of remote work is for personal convenience and not based on a business project taking place in France.

Key points from Part 1: What organisations needed to know before 31 December 2020

- Every British national living in France by 31 December 2020 should apply for residence status based on the Withdrawal Agreement, even if already holding a French residence permit. The online platform for this process is already active. Employers should conduct right to work/stay checks to ensure compliance by the prescribed deadline.
- As of 1 January 2021, non-EU staff of a UK-based company should no longer be eligible for the Van der Elst route (a visa without work permit based on the free provision of services within the EU for EU companies) and may be subject to standard French immigration rules.
- Projects of business mobility in France of British nationals will be impacted by the end of the free movement principle. Employers should take in to consideration processing times to get appropriate authorisations (visas and/or work permits). For any long stay (i.e. of more than 90 days), the need for passports valid for a minimum of 6 months should be also anticipated.



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Germany

Options available to British nationals or staff of UK companies based in Germany after 1 January 2021

1. Rights under the Withdrawal Agreement

According to the Withdrawal Agreement, British nationals who are entitled to free movement and are residing in Germany by 31 December 2020, and their family members, have the right to reside and work in Germany.

This is confirmed by a residence document called residence document GB, which is issued ex officio by the German foreigners offices.

2. Immigration options according to German immigration law

If the British national cannot derive any rights from the Withdrawal Agreement, their eligibility to reside and work in Germany is determined by German immigration law.

Depending on if the British nationals will work on a local German employment contract at a German employer in Germany or will be assigned to a German entity, different types of German residence permits are available.

For the work of British nationals in Germany, work authorisation is required. For local employment at a German entity, a residence permit can be issued as a:

- Blue Card for foreign academics
- Residence permit for skilled workers with a vocational training or an academic degree
- Residence permit for work purpose as a foreign specialist

If the British national is sent by a British entity outside of the EU to a German entity to work as a manager or specialist, a residence permit can be issued as an assignment/intra-company-transfer ICT Card (ICT).

Working remotely in Germany after 1 January 2021

The German government has now drafted a law for work from home on a regular basis.

Remote work is categorised as being in a 'home office' if the employer sets up a fixed workplace for the employee outside the company and the employee regularly works from there. It is designated 'Mobile work' when the employer allows the employee to perform work outside the company, without setting up a fixed workplace.

The employee may only work in a home office or remotely if this is permitted under an employment contract, a company agreement or a case-by-case basis by the employer. During remote work, employees must observe the German statutory maximum working time of 8 hours per day and data protection must be complied with.

All foreign nationals residing in Germany and working for a German company, either on local employment or an assignment, require a residence permit with work authorization for Germany, regardless if they work in the office or remotely.

During business trips to Germany, foreign nationals can perform remote work activities for their foreign employer without requiring a German work permit.

Key points from Part 1: What organisations needed to know before 31 December 2020

- Continued residence of British nationals in Germany – who are entitled to freedom of movement and reside in Germany on 31 December 2020 – is guaranteed by law from 1 January 2021 onwards.
- British nationals based in Germany before 31 December have until 30 June 2021 to notify their local Foreigners Authority of their stay in Germany and apply to receive a new residence document called residence document GB.
- All British nationals entering Germany after 1 January 2021 will be considered as third-country nationals according to German immigration law and require a residence permit including work authorisation, either for stays in Germany of more than 90 days or if they perform work activities.



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Ireland

Options available to British nationals or staff of UK companies based in Ireland after 1 January 2021

British nationals in Ireland may continue to freely travel to live and work in Ireland after 31 December 2020.

Ireland and the UK are members of the Common Travel Area (the CTA) which will continue to operate after 31 December 2020. Under the CTA, Irish and UK citizens have the same rights and entitlements in each jurisdiction to reside and work, and access to healthcare services, social protection services and education. The UK and Irish Governments have committed to upholding the values of the CTA.

EEA nationals will continue to be able to work and reside freely in Ireland. Non-EEA nationals working in Ireland for UK companies will require an Irish employment permit to work for over 90 days unless another right permits them to do so, such as marriage to an Irish national. Previously, non-EEA nationals working in Ireland could work for a period in the UK, and vice versa, on the basis of a Van Der Elst permission. This will no longer be possible post 1 January 2021.

Working remotely in Ireland after 1 January 2021

Remote working in Ireland has become increasingly common in 2020.

Employers outside Ireland whose employees are or will be working remotely in Ireland should consider potential issues relating to taxation, employment law, immigration, data protection and protection of confidential information during and post-employment.

Organisations whose employees work remotely in Ireland should consider whether there is a risk of creating a permanent establishment in Ireland with consequent potential liability for Irish corporation tax. They should also consider whether — and, if so, how — employee income and social insurance taxes should be returned to Revenue. Employees working in Ireland will have the protections of Irish employment law, which could be more advantageous to them than in the home country. Complying with statutory health and safety obligations should also be considered. Non-EEA nationals will require some form of immigration permission to work in Ireland regardless of where their employer is based.

Obtaining local employment and taxation advice is advised before recruiting, deploying or terminating the employment of employees who work remotely in Ireland.

Key points from Part 1: What organisations needed to know before 31 December 2020

- The Common Travel Area will continue to allow UK nationals to freely travel to live and work in Ireland as they have done prior to 31 December 2020.
- The Irish immigration system in place for non-EEA nationals will generally not be impacted. EEA nationals will not be impacted, they may continue to rely on EU free movement rights to work and live in Ireland.
- Non-EEA family members of UK nationals will no longer be entitled to rely on EU Treaty Rights when accompanying a UK family member to live and work in Ireland. A new system will be implemented in Ireland from 1 January 2021 for these non-EEA family members. Details of this system are not yet available but are due to be published in early 2021.



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Italy

Options available to British nationals or staff of UK companies based in Italy after 1 January 2021

UK citizens will be non-EU nationals and any Italian company looking to hire a non-EU national needs to follow Italian Immigration Law, where the employee requires a work permit, work visa and residence permit. In general, for any trip that is longer than 90 days, UK citizens will need to go through the options available in Italian Immigration Law:

- **EU blue card:** highly skilled workers with a 3-year University degree, validated by the Italian Consulate and a job offer from an Italian employer for at least one year and with a minimum salary of €25,000/year.
- **Intra-company assignment work permit:** managers and managers/specialists/trainees posted to a company of the same group in Italy.
- **Service agreement assignment work permit:** employees temporarily posted to perform activities further to a contract/service agreement between the foreign employer and the company in Italy.
- **Self-employment: freelance.** This visa can be applied for by individuals who are freelance and do not have a company that wants to hire them or sponsor their work permit, subject to Italy's quota-system, which is fixed annually.
- **Self-employment: officers of Italian companies.** Officers of an Italian company in activity for at least 3 years can apply for a self-employment visa, subject to Italy's quota-system.
- **Self-employment: entrepreneurs.** Entrepreneurs intending to implement an investment plan of interest for the Italian economy, involving an investment of at least €500,000 and creating at least 3 new jobs in Italy and subject to Italy's quota-system.
- **Elective residence visa:** this visa is for those who want to live in Italy without working. ERV requires the applicant to show a minimum passive income of no less than €31,000/year and to have suitable accommodation.
- **Investor visa:** the Investors' Visa can be obtained by: (i) purchasing €2 million in Italian government bonds or (ii) investing €500,000 in a company or €250,000 in an 'innovative start-up'; or (iii) donating €1 million in philanthropic projects of public interest.
- **Start-up visa:** this visa is for non-EU nationals intending to set up an innovative start-up business or to join an already established start-up company and is subject to Italy's quota-system.

Working remotely in Italy after 1 January 2021

Italy does not have any specific provision regarding 'remote working' carried out by foreign visitors. The only reference we have found and that be applied by analogy to this scenario, is in the guidelines of the Italian Consulate of San Francisco for a kind of retirement visa. This visa does not allow an individual to work and the Consulate specifically indicates that:

"Applicants are not permitted to work from home, blog for payment, offer consulting services to their previous employers, or otherwise dodge this restriction."

From a strict legal point of view, it is our opinion that even though the individual would be working for clients outside Italy, they would still work and if they have entered Italy without a work visa (for tourism or business) they would violate the scope of this visa, even if they are a non-visa national. Additionally, even if working remotely, according to EU Guidelines, they would be subject to the rules of the country of their work.

Key points from Part 1: What organisations needed to know before 31 December 2020 – updated

- From 1 January 2021, UK citizens registered with the local Register Office before this date must apply for a Biometric Residence Permit to have the right to continue residing and working in Italy beyond the end of the transition period. The card will be valid for five years for those with less than five years residence, or valid for ten years for those with 5 continuous years of residency or longer.
- Applicants need a "Attestazione di iscrizione anagrafica", issued by the Anagrafe (Register Office) of the Municipality (Comune). This is the certificate issued by the local Municipality confirming residency before 1 January 2021 with reference to the Brexit agreement.
- The permit must be requested at the local Questura (Immigration Police). There will then be a fingerprints appointment and a further trip to the Police to pick up the document. All of these steps require personal attendance.



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Malta

Options available to British nationals or staff of UK companies based in Malta after 1 January 2021

As it stands, British nationals who wish to take up residency in Malta have the following options:

- **Residence status in accordance with the Brexit Agreement (Legal Notice 18 of 2020)**

Eligible applicants are UK nationals and their family members who have resided in Malta before the end of December 2020. An application is to be submitted by June 2021 latest, subject to proof of uninterrupted stay in Malta for 3 months prior the submission. The residence card will be valid for 10 years and standard personal tax rates apply.

- **Global Residence Program (GRP)**

The Global Residence Programme is a residence tax program for non-EU nationals under which UK nationals may apply. This programme gives both a residence status as well as a tax status. Applicants under this programme are not allowed to reside outside of Malta for 183 days or more.

The main benefit under this scheme is a special tax status whereby applicants are taxed at a flat rate of 15% on foreign income remitted to Malta, subject to a minimum annual tax of €15,000. A flat rate of 35% applies to locally generated income. Applicants should be economically self-sufficient and in possession of a property in Malta and a health insurance policy. A residence card issued under this programme is valid for 1 year, renewable annually subject to meeting the prescribed criteria.

- **Malta Residence and Visa Program (MRVP)**

The Malta Residence and Visa Programme is a permanent residence programme for non-EU nationals under which UK nationals may apply. This program entitles successful applicants and their family members to permanent residency for life. The applicant must be self-sufficient, earning at least €100,000 annually or having at least in his possession capital of not less than €500,000. On approval the applicant is to buy or rent property in Malta, invest in Malta Government bonds as well as pay a contribution to the Government of Malta.

- **Employment route**

Currently UK nationals residing in Malta are not required to hold a work permit for the purpose of exercising an employment in Malta, however as of 1 January 2021, work permits shall be required accordingly.

Working remotely in Malta after 1 January 2021

Employment income generated through employment activity in Malta is taxable in Malta as local source income, at the applicable rates. The standard personal income tax rates in Malta are between 0% – 35%, subject to few exceptions where Special Tax Status is granted by the Commissioner for Revenue of Malta.

The employment income is determined through the Final Settlement System, where taxes and social contributions are usually deducted from the monthly salary.

Until the end of the transition period, a work permit was not required for British nationals who are carrying out employment activity in Malta. From 1 January 2021 a work permit shall be required to be obtained by British nationals who want to enter employment in Malta.

Key points from Part 1: What organisations needed to know before 31 December 2020

- UK nationals relocating to Malta in 2021 for employment purposes will be required to apply for a work permit.
- UK nationals already in Malta before 31 December 2020 should apply for a new residence permit by 30 June 2021.
- Every time a Maltese company or individual imports from, or exports to, the United Kingdom they will need to (at least) complete a customs declaration.



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Netherlands

Options available to British nationals or staff of UK companies based in the Netherlands after 1 January 2021

The Netherlands has a pretty smooth but also restrictive system for employment immigration. Options for UK companies to send their workers to the Netherlands are available, and the visa category depends on the type of transfer. On one hand, you have a specific visa type for the temporary transfer of managers or specialists, who remain on a UK contract. On the other hand, there is a visa regime for highly skilled workers who are locally hired by the Dutch entity of the company. If there is no Dutch entity (yet), a payroll company can temporarily sponsor the visa.

In both cases (transfer and local hire) visa issuance is highly regulated through salary thresholds. If the offered salary meets the threshold, the government by and large assumes a special skill set is involved. The worker will then be allowed a permit to live and work in the Netherlands.

If the Dutch part of the company holds a sponsor license ('recognized sponsorship'), processing is facilitated and expedited. On average, the processing time is two weeks for applications lodged on behalf of such recognised sponsors.

Working remotely in the Netherlands after 1 January 2021

The Netherlands has no specific issues or policy regarding remote working in the Netherlands. Dutch immigration regulations only cover work 'on Dutch territory'. This means that if a worker is outside of the Netherlands, it is not an issue if they work for a Dutch company. Aside from taxes, the Dutch government has no opinion on this. However, the other way around is problematic. If someone is working remotely in the Netherlands for a company outside of the Netherlands, work authorization would be required, and this may be hard to obtain.

This is especially difficult if the company the person is working for has no presence at all in the Netherlands. In that case, no one could sponsor the work permit. However, even then – and in very specific circumstances only – sponsorship may be temporarily offered by a Dutch payroll company, holding a sponsor license.

Key points from Part 1: What organisations needed to know before 31 December 2020

- Frontier workers can still apply (online) for a document to be able to keep the right to work in the Netherlands beyond 31 December 2020. Make sure to apply for UK frontier status for employees before 31 December.
- Employees being sent to live and work in the Netherlands may still rely on the Withdrawal Agreement if they enter the Netherlands before 31 December. They would need to prove that they take up main residence here (apply for Town Hall registration, sign a lease etc.).
- If a UK worker already entered the Netherlands before 31 December, their family members may still rely on the Withdrawal Agreement for a right to join them up until June 2021.



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Poland

Options available to British nationals or staff of UK companies based in Poland after 1 January 2021

Regulations in Poland do not offer any immigration solutions for staff of UK companies. The situation of employees will depend on their personal status, such as nationality and family status. UK nationals living in Poland before 31 December 2020 will be able to continue their stay. They should complete additional registration formalities starting from January 2021. The same applies to their family members, such as spouses or children. Family members do not have to hold UK or EU nationality to be able to stay in Poland.

After 5 years of stay, UK nationals (and their families) will be able to apply for permanent residence in Poland. The 5 year stay can also include the period before 31 December 2020. Applying for Polish citizenship will be possible no sooner than approx. 9 years after the move to Poland.

Posted workers from UK will be treated as persons that do not benefit from post-Brexit protection. This applies to workers sent to perform work in Poland while they remain on a foreign payroll. For posted workers who worked in Poland before 31 December 2020, separate solutions were prepared. They will be allowed to stay and work in Poland in 2021, however, they will have to apply for a Polish Residence Permit before 31 December 2021 to keep their rights.

Working remotely in Poland after 1 January 2021

The issue of remote work raises a lot of questions in Poland due to limited regulation. Only basic, temporary regulations for remote work were adopted for the period of the pandemic. The government is working on amendments to the Polish Labour Code to regulate the matter more precisely. It is still uncertain when the changes will be adopted.

According to the Polish law, both Polish and non-Polish workers have the same rights under employment regulations. Regardless of nationality, an employee must be provided with technical equipment to perform work (e.g. a computer). It is the employer who is responsible for providing safe working conditions and necessary means to work. This does not change when the employee starts working remotely. Accidents during remote work can still qualify as workplace accidents. Also, the employer must still control working time, although controlling work performed from home is more complicated in practice.

There are no strict rules on compensation if the employee uses private equipment for work. Some companies have introduced a lump sum allowance for additional costs of electricity usage during remote work. The lack of clear regulations can result in future disputes with authorities over the applicable tax and social security contributions.

Key points from Part 1: What organisations needed to know before 31 December 2020

- Polish regulations about formalities for UK nationals are still in development as of December 2020.
- UK nationals should register their stay in Poland before the end of 2021.
- Lack of registration documents will not automatically abolish the right to work in Poland in 2021.



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Portugal

Options available to British nationals or staff of UK companies based in Portugal after 1 January 2021

The Withdrawal Agreement protects so-called 'cross-border workers'. The cross-border worker must be an employee or self-employed in a country and live in another country. The cross-border worker may continue to work in Lisbon while living elsewhere and apply to the Portuguese competent authorities to issue a document certifying the individual as a cross-border worker protected by the Withdrawal Agreement. This document will ease business trips between Portugal and the United Kingdom.

Working remotely in Portugal after 1 January 2021

As mentioned above, if the UK citizen is living/working in Portugal before the end of 2020, they can apply for a Residence Permit under the Withdrawal Agreement without any problem. UK nationals who come to live in Portugal after 1 January 2021 to work remotely may need to apply for a residence visa and should follow the relevant applicable process.

Key points from Part 1: What organisations needed to know before 31 December 2020

- UK citizens currently living in Portugal without a residency permit can apply for the same from the relevant City Hall until 31 December 2020.
- UK citizens legally residing in Portugal before 31 December 2021 must apply for a Residence Title exchange through the portal before the end of June 2021.
- It is possible to apply for the residency title after 31 December 2020, under the Withdrawal Agreement, if residence can be proven in Portugal before the end of 2020.



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Spain

Options available to British nationals or staff of UK companies based in Spain after 1 January 2021

UK nationals and their Non-EU dependents residing in Spain prior to 31 December 2020 maintain their right to reside and work in Spain as EU nationals.

It is important for UK nationals, their dependents, and employers to ensure they have in place the official documentation proving their residence status under the Withdrawal Agreement to avoid potential hurdles that may jeopardise their legal residence status and affect their employment rights after 31 December.

UK nationals and their family dependents entering Spain from 1 January 2021 will be considered as third-country nationals and will need to apply for the corresponding permit allowing them to reside/work in Spain prior to their entry to the Spanish territory.

This condition will not apply to UK nationals who are dependents of an EU national. They will have the right to apply for a residence card as an EU dependent.

Working remotely in Spain after 1 January 2021

UK nationals and their family dependents residing in Spain prior to 31 December have the right to work. If they work remotely within the Spanish territory, this will not affect their residence status. Working under these circumstances is based on an employment agreement with the Spanish employer.

In the event of UK nationals and their dependents working remotely from another country for a Spanish employer while not holding the corresponding documentation proving their residence in Spain prior to finalisation of the Withdrawal Agreement:

- The UK Nationals would be subject to travel restrictions to enter Spain starting 1 January 2021
- The UK Nationals may be required to obtain the corresponding residence permit allowing them to work in case the authorities do not recognise their employment relationship prior to the finalisation of the withdrawal period, as a ground to grant them the residence permit based on the Withdrawal Agreement.

Key points from Part 1: What organisations needed to know before 31 December 2020

- Under the Withdrawal Agreement, UK nationals residing in Spain prior to 31 December 2020 continue to have the right to live and work here. Those who hold a EU registration certificate (proving their residence in Spain) can apply for a residence card confirming this right. While not mandatory, applying for the card is highly recommended to ease administrative burdens in future.
- UK nationals based in Spain who do not hold EU registration certificates must apply within 3 months from the date of entry in Spain for a residence document according to the Withdrawal Agreement – this will take 3 months – and can then apply for a residence card.
- Under the Withdrawal Agreement, non-EU dependents of UK nationals do maintain the same rights from an immigration perspective as EU nationals, as well as the right to live and work in Spain. These third-country nationals can take the same steps to apply for residence cards as described above.



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Sweden

Options available to British citizens or staff of UK companies based in Sweden

Under the Withdrawal Agreement a British citizen and their family members can continue living in Sweden during the transition period up until 31 December 2020. To be able to stay in Sweden after the transition period, they need to apply for new 'residence status' with the Swedish Migration Agency and meet the following requirements:

- be a British citizen, current family member of a British citizen, or former family member of a British citizen
- have been in Sweden in accordance with EU law before the end of the transition period
- continue to live in Sweden after the end of the transition period and continue to meet the requirements for the right of residence (i.e. as an employee, sole proprietor, student, person with adequate funds or a family member of a person who meets these conditions)
- apply for residence status or permanent residence status before the end of the application period on 30 September 2021.

Anyone who is granted residence status will have the right to live and work in Sweden on essentially the same basis as an EU citizen.

As for British citizens who want to move to Sweden after the transition period, they will have to apply for a residence permit in the same way and on the same basis as other people who are not EU citizens (unless otherwise decided in future negotiations between the EU and UK).

Working remotely in Sweden after 1 January 2021

A British citizen who (at the end of the transition period and in continuation) lives in another country, but works in Sweden by being employed or by having their own company, is considered to be a 'frontier worker'.

Since frontier workers do not live in Sweden, they cannot receive residence status. Instead, a frontier worker may apply for a certificate that confirms they are a frontier worker according to the Withdrawal Agreement. In contrast to British citizens who live in Sweden, there is no time limit for when frontier workers must apply for this certificate.

To apply for a frontier worker certificate with the Swedish Migration Agency, the applicant must be able to verify that they:

- live in another country, such as a housing contract or equivalent civic registration
- work or are a sole proprietor in Sweden, which is verified in the same way as in an application for residence status

- lived in another country and worked in Sweden at the end of the transition period
- can provide a copy of their passport or national ID card.

The foreign worker will receive a card as evidence that they are a frontier worker. The card is valid for five years and can be extended.

Key points from Part 1: What organisations needed to know before 31 December 2020

- British citizens living in Sweden at the end of the transition period, 31 December 2020, need to apply for new 'residence status', in accordance with the Withdrawal Agreement, to be able to continue living and working in Sweden. Anyone who is granted residence status will have the right to live and work in Sweden on broadly the same basis as an EU citizen. Applications must be submitted to the Swedish Migration Agency by the end of September 2021 at the latest.
- Only British citizens living in Sweden under EU free movement rules need to apply. British citizens who have a Swedish residence permit have the right to live in Sweden and therefore do not need to apply for residence status.
- As for British citizens working in Sweden but living in another country (e.g. Denmark), such 'frontier workers' will be able to continue working in Sweden after the end of the transition period. Frontier workers will have the right to receive a document certifying their status as frontier workers. In contrast to British citizens who live in Sweden, there is no time limit for when frontier workers must turn in the application for this certificate.



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Switzerland

The options available to British nationals or staff of UK companies based in Switzerland

The UK and Switzerland have agreed on an extension of using the online registration system for UK national assignees who are to work in Switzerland for a maximum of 90 days per calendar year. These registrations can continue for the next two years.

Obtaining work permit approvals for the local hire of UK nationals will need to conform to the processes that already exist for non-EU nationals. This means that the Swiss company wishing to hire a UK national will need to provide proof that a labour market test was performed, indicating that no Swiss, EU/EFTA national or non-EU/EFTA national already in possession of a valid work permit can or will perform the tasks.

No visas will need to be obtained by UK nationals. Entry to Switzerland will be possible with a British passport. The reason for entry will determine whether further documentation will be required, such as the performance of services or the start of work based on local hire as well as residence.

Working remotely in Switzerland after 1 January 2021

If a UK national wishes to live in Switzerland but work remotely for a company that is not domiciled in Switzerland, it is up to the migration authorities to evaluate such a request and grant or deny it. There is no legal claim to such residence, and the decision lies at the discretion of the authorities. Special emphasis should be placed on complete and truthful explanation of the intended status for the remote work. This enables the authorities to determine whether the activity is to take place within the framework of an assignment (which requires prior work permit approval) or does not have a connection to the Swiss economy and labour market.

The jurisdiction for work permit approvals lies with the authorities at the place of work. If a UK national is hired locally in Switzerland but will work from home rather than in the offices of the employer, then the place of work at home determines the location. The process for obtaining work permit approval for the UK national will follow that of all non-EU nationals who do not yet hold a valid work and residence permit.

Key points from Part 1: What organisations needed to know before 31 December 2020

- From 1 January 2021, UK nationals will no longer be EU nationals, thus in terms of immigration to Switzerland, some changes need to be considered.
- The UK and Switzerland have agreed to continue the process of online registration for assignees who need to work in Switzerland for a maximum of 90 days per calendar year for the next two years.
- For local hires in Switzerland, UK nationals will require prior work permit approvals – though no visas – to enter Switzerland with the purpose of work and residence.



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