

## Update on 'no-deal' Brexit: withdrawal rules for UK citizens and family members

In anticipation of a possible 'no-deal' Brexit, the Deputy Minister of Justice and Safety has published withdrawal rules for citizens of the United Kingdom and their family members who lawfully reside in the Netherlands on March 29, 2019. These provide for transitional rules applying until June 30, 2020, followed by final rules.

We informed you about these transitional rules on [January 8, 2019](#). In this memorandum we discuss the expansion of these rules with a provision for cross-border workers and provide further information about the implementation of the transitional rules.

### 'No-deal rules' for cross-border workers

To supplement the previously announced transitional rules for UK citizens and their family members who lawfully resided in the Netherlands before Brexit, there are now also transitional rules for UK *cross-border workers* in the event of a 'no-deal' Brexit. The rules mean that cross-border workers will be able to continue to work in the Netherlands during the transitional period, subject to conditions, without requiring a work permit.

This exemption is available if the following conditions are met:

- you must have been working in the Netherlands as a cross-border worker on March 29, 2019;
- you must have a valid employment contract showing that your activities in the Netherlands will also continue after March 29, 2019;
- you must live in the United Kingdom (have your principal residence there) and return to the UK on average once a week;
- you must have a valid UK passport.

If you meet these conditions it is important that you first visit the Immigration and Naturalization Service (INS) and apply, in person, for a *residence endorsement sticker*. This is a sticker that the INS inserts in your passport. The sticker is required if you wish to take advantage of the work permit exemption.

The INS has not stipulated how someone can prove that they were already working in the Netherlands as a cross-border worker before March 29, 2019. Nor are the conditions that an employment contract must comply with clear and whether, for example, the contract must specifically state that (some of) the work takes place in the Netherlands. The sticker includes the following statement: 'UK cross-border worker, employment permitted. Work permit not required' and is valid for the entire transitional period, thus until June 30, 2020.

### Sticker appointment

Generally speaking, the INS is very busy and we expect the appointment calendar to fill up fairly quickly. The waiting time for picking up the sticker will presumably be quite long. We recommend that you contact the INS promptly to schedule an appointment.

People in possession of a 'V number' can make an appointment online [via the INS website](#).

It is of course important that employers keep a copy of the sticker in their personnel files.

#### If you were not yet working in the Netherlands before Brexit

The exemption does not apply to cross-border workers who only start working in the Netherlands after Brexit; they will need a work permit. Whether the conditions for obtaining a work permit are met will be assessed on a case-by-case basis. A work permit application can be filed with the UWV (the Dutch Employee Insurance Agency); a statutory deadline of five weeks applies to the processing of applications. If you need help with the procedure, please contact our Immigration Team.

### **The transitional rules in practice**

#### Temporary residence permit

In anticipation of a possible 'no-deal' Brexit, the INS will send all UK citizens who are registered with a Dutch municipality and thus will fall under the transitional rules a written statement confirming their right of residence. This letter is the '*temporary residence permit*' and is an important legal document as it proves your lawful residence in the Netherlands.

This is particularly important if there is a 'no-deal' Brexit on March 29, 2019.

The temporary residence permit will then be valid during the transitional period that runs until June 30, 2020. Please note that the document is only valid in combination with a valid passport. You must provide your employer with a copy, which will be kept in your personnel file. And you must carry the temporary residence permit with you, along with your UK passport, when traveling to and from the Netherlands.

Family members of UK citizens who do not have the EU/EEA or Swiss nationality will also receive a temporary residence permit. They must also be able to provide the (expired) EU residence document upon request. It is therefore important that they keep these documents in a safe place.

UK citizens in the possession of a permanent residence permit on March 29, 2019, can also lawfully reside in the Netherlands after Brexit by virtue of this permit and there is therefore no reason to issue them with a temporary residence permit. UK citizens with dual nationality of another EU/EEA Member State have the right to reside in the Netherlands after Brexit by virtue of their second nationality. Temporary residence permits will therefore not be issued to them.

#### Final rules

The transitional period will be used to issue Dutch residence permits to UK citizens who apply for them so that they can also continue to reside in the Netherlands after the



transitional period. This permit will be issued under the same conditions that currently apply for residence as an EU citizen; thus no new or stricter conditions will apply. In order to be able to process the large numbers of applications efficiently, it is important that you wait until you receive a letter from the INS inviting you to apply for a residence permit and not to file the application on your own initiative. The INS will ensure that everyone receives this letter by April 1, 2020 at the latest.

If you did not have a right of residence in the Netherlands before Brexit

UK citizens who only intend to live in the Netherlands after Brexit can, in the event of a 'no-deal' Brexit, apply for a residence permit under national law, such as a highly skilled migrant permit or a residence permit for study, from March 30, 2019 onward. They are not required to possess an authorization for temporary stay (*machtiging tot voorlopig verblijf*; MVV), which means they can travel to the Netherlands without a special visa to settle here.

The eligibility conditions for a residence permit will be assessed on a case-by-case basis. If you need advice about or help with the procedure, please contact our Immigration Team.

Meijburg & Co

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