

## LABOUR MEASURES ADOPTED BY THE SPANISH GOVERNMENT TO REDUCE THE IMPACT OF A NO-DEAL BREXIT

**Spanish Royal Decree-Law 5/2019 dated 1 March**, on the adoption of contingency measures in light of the withdrawal of the United Kingdom from the European Union without agreement under Article 50 of the Treaty on the Functioning of the European Union ("TFEU") was published in Spain's Official State Gazette on 2 March (the "**Royal Decree**").

The temporary measures established in the Royal Decree are designed to facilitate the transition towards the situation where the UK is considered a third country, to protect the interests of citizens and economic operators who exercised their right to freedom of movement according to the liberties granted under the TFEU prior to the date the UK is expected to leave the European Union.

As a continuation of the Client Briefing circulated recently on the impact of Brexit on the [provision of financial services](#), we summarise here the Spanish Government's contingency plan designed to preserve the interests of Spanish and British citizens, which includes measures of various types on foreign residence, labour relations and social security.

Of these measures we highlight the following:

### WORK AND RESIDENCE OF UK NATIONALS RESIDING IN SPAIN AND THEIR FAMILY MEMBERS

UK nationals residing in Spain and their family members can prove their residency in Spain prior to the date on which the United Kingdom is expected to leave the EU ("**Brexit Day**"), using: (i) a certificate of registration as an EU citizen or family card of an EU citizen, issued prior to Brexit Day; or (ii) any other means of proof admitted by law, in case such EU citizen certificate or family card has not been obtained. In the latter case, the UK national's situation will be assessed according to the documentation request procedure established *ad hoc* for this purpose.

Separately from the above, all UK nationals residing in Spain prior to Brexit Day, as well as their family members, must apply for the corresponding documentation to confirm their new status within 21 months following the date

#### Key concepts

- The Royal Decree will enter into force on the day when the Treaties of the European Union cease to apply to the UK pursuant to the provisions of Article 50.3 of the TFEU.
- The United Kingdom is expected to leave the European Union on 30 March 2019.
- Those measures subject to the British authorities granting reciprocal treatment to Spanish citizens will be suspended two months after the Royal Decree enters into force, if such reciprocal treatment is not ultimately granted.

on which the UK is expected to withdraw from the EU with no deal in place. During this period, and until their application is approved, such UK citizens will continue to be considered legally residing in Spain.

The Royal Decree also governs the access requirements to long-term residency for UK nationals living in Spain and their family members who have resided in Spain legally and continuously for at least 5 years.

## **PROFESSIONALS IN SPAIN FOLLOWING A NO-DEAL BREXIT**

UK nationals who, following a no-deal Brexit, carry out their profession or perform professional activities on a permanent basis in Spain (i) whose professional qualifications have been recognised, or (ii) who must be a citizen of an EU Member State in order to access and carry out their profession, may continue to perform such professional activities under the same terms as they have previously been doing.

They may also sit the aptitude tests for access to certain professions, provided that such tests were scheduled prior to the effective no-deal Brexit, as the case may be.

These specific measures will be subject to reciprocal treatment being granted by the British authorities.

## **RECOGNITION IN SPAIN OF PROFESSIONAL QUALIFICATIONS AND ACADEMIC CERTIFICATES**

Applications for recognition of professional qualifications obtained in the United Kingdom or Gibraltar which are submitted to the Spanish authorities prior to the entry into force of the Royal Decree or within the following 5 years, will be decided in accordance with the legislation in force on the no-deal Brexit date.

Applications for the automatic recognition of academic or training certificates may also be made to the Spanish authorities prior to the entry into force of the Royal Decree or within the following 5 years, provided that the studies began prior to the date of the no-deal Brexit (regardless of the certificate's issue date). This measure will not apply if the United Kingdom were to modify the studies or training required to obtain the certificate in question, deviating from the minimum conditions established at the European level.

These specific measures will be subject to the British authorities granting reciprocal treatment.

## **CROSS-BORDER WORKERS AND WORKERS TEMPORARILY POSTED TO THE UNITED KINGDOM**

### **Cross-border workers**

UK nationals residing outside Spain who are considered cross-border workers in Spain on Brexit Day must apply for the corresponding documentation to confirm their status according to the process established by law. This will be subject to the British authorities granting reciprocal treatment to Spanish citizens.

### **Posted workers**

Companies established in Spain which have workers who are temporarily posted to the United Kingdom on Brexit Day will continue to apply the local UK legislation which transposes Directive 96/71/EC (concerning the posting of workers in the framework of the provision of services) during the time they are posted. This measure will only apply if the British authorities grant reciprocal treatment to the workers of companies established in the United Kingdom who are temporarily posted to Spain.

## **MAINTENANCE OF EUROPEAN WORKS COUNCILS**

The Royal Decree guarantees that European Works Councils created by Community-scale undertakings or groups of undertakings in which employees or companies from the United Kingdom are involved but have their central management in Spain, will be maintained.

## **SOCIAL SECURITY FOR UK NATIONALS**

Unless an international, bilateral or multilateral instrument coordinating the Spanish and UK's social security systems is adopted prior to Brexit Day, these rules will apply during the 21 months following a no-deal Brexit:

- UK nationals working and residing legally in Spain on Brexit Day who are subject to Spanish law on Social Security will have the same rights and obligations as Spanish citizens. Likewise, UK nationals subject to British law on Social Security may maintain that situation until the end of the period established by law, after

which time they will become subject to Spanish Social Security law, provided that British authorities grant reciprocal treatment.

- Spain will continue exporting contributory pensions and their corresponding revaluations, provided that, on Brexit Day (or prior thereto), UK nationals are or have been subject to Spanish social security legislation or that, if subject to British law, whether as active workers or pensioners, they reside in Spain on Brexit Day.
- It is expected that confirmed periods of insurance in Spain and in the United Kingdom will be accumulated prior to the no-deal Brexit date, so that they create an entitlement and so that the amount of contributory pensions can be calculated, as well as the amount of temporary disability, maternity and paternity benefits. These measures will be subject to the British authorities granting reciprocal treatment.
- Any facts or events occurring, or benefits or income earned or received in the UK prior to Brexit Day will have the same effects as if they had occurred or been earned/received in Spain, for the purpose of applying Spanish law, provided that reciprocal treatment is granted by the British authorities.
- UK nationals may access the unemployment benefits paid by Spain, for the contribution periods in the United Kingdom prior to Brexit Day, provided that the last contributions were made in Spain and provided that the UK citizen continues to reside in Spain.
- The Royal Decree also includes similar measures on social security designed to protect the rights of Spanish citizens affected by Brexit, as well as those of citizens of EU Member States, of the European Economic Area and Switzerland.

## **HEALTHCARE**

Spain is expected to continue providing healthcare during the 21 months as from the entry into force of the Royal Decree, in the same terms and with the same conditions as those established prior to the United Kingdom's withdrawal from the European Union, provided that the UK guarantees these same conditions to those persons who are entitled to receive healthcare paid for by Spain.

The Royal Decree **will enter into force** on the day when the Treaties of the European Union cease to apply to the United Kingdom pursuant to the provisions of Article 50.3 of the TFEU (the UK is expected to leave the EU on 30 March 2019), unless the EU and the UK reach an exit agreement pursuant to Art. 50.2 TFEU.

**Some of the measures** explained here (where expressly stated in the Royal Decree) **will be suspended two months after the Royal Decree enters into force**, if the British authorities do not grant reciprocal treatment to Spanish individuals or legal entities in each of the areas affected. Meanwhile, those measures valid only for a certain period will become invalid merely due to the passage of time, upon their date of expiry, unless they are extended by the Spanish Government.

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