

POLAND PREPARES FOR BREXIT

In light of the political uncertainty in United Kingdom, the Polish Parliament has adopted three acts addressing the basic issues that will ensue in the event the UK leaves the EU without a deal. Under a "no-deal Brexit", EU law will cease to apply to the United Kingdom on the day the UK leaves the EU and for Member States the UK will become a third country.

In response to that situation, acts regulating the following issues have been published in the Journal of Laws:

- British citizens' right of residence;
- posting of UK workers to Poland;
- the ability of British citizens to and work and carry on economic activity in the Republic of Poland;
- recognition of professional qualifications gained in the United Kingdom; and
- the conduct of economic activity in Poland by British financial institutions.

This briefing deals with the first four areas. The regulation of the activity of financial institutions is discussed in a separate briefing.

Rights of residence of British citizens in the Republic of Poland

The issue of short-term residence of British citizens in EU Member States will be regulated at the EU level. It is planned that British citizens will be exempt from visa requirements when travelling to Schengen countries if staying for no longer than a total of 90 days in any 180-day period.

Generally, however, from the date the UK leaves the EU, British citizens will lose those rights derived from the freedoms available to citizens of EU member states. The legislation published is aimed at preventing a situation where British citizens and their family members would be treated as foreigners living in Poland illegally.

Under the new legislation, the residence in Poland of a British citizen and his/her family members who, on the basis of freedom of movement in the EU, have the right of residence or permanent residence in Poland on the day before the act comes into force, will be considered legal until 31 December 2020. The aim of this "interim period" is to enable British citizens and their family members to file applications for temporary or permanent residence permits. The act also contains special regulations in this regard. Namely,

Key issues

- Rights of residence of British citizens in the Republic of Poland
- Work and economic activity
- Posted workers
- Provision of services by British undertakings
- Recognition of qualifications

where a British citizen or his/her family member has a right of residence on the date the act comes into force, on his/her application he/she will be granted a temporary residence permit. The permit can be granted once, for a period of five years. If those persons hold the right of permanent residence, on their application they will be granted a permanent residence permit for an indefinite period of time.

Work and economic activity

A British citizen and/or a member of his/her family who is considered as legally residing in Poland in the period from the date the act comes into force to 31 December 2020 (and also during proceedings for a temporary or permanent residence permit) is authorised to work in Poland on the same terms as a Polish citizen. Such persons have the right to continue conducting economic activity in Poland if they were entered in the Central Register of Information on Economic Activities and were conducting economic activity (or the activity had been suspended) on the date the act comes into force.

British citizens and their family members who are granted a temporary residence permit on the basis of the act will be exempt from holding a separate work permit. Such persons will also have the right to take up and conduct economic activity in Poland on the same terms as Polish citizens. It should be stressed that this solution applies only to persons who obtain a temporary residence permit on the grounds that on the day before the act comes into force they have the right of residence in the Republic of Poland. In relation to persons who obtain permanent residence permit, no special rules have been provided by the act. Nevertheless, on the basis of current Polish law, persons who have a permanent residence permit do not need to obtain a separate work permit to work in Poland.

Posted workers

A worker posted by an employer from the United Kingdom to work in the Republic of Poland may continue that work without having to hold a work permit, but no longer than three months after the act comes into force. The provisions of the Act on Posting of Workers to Provide Services will apply to such employers and workers within the current scope, on condition, however, that the worker is posted no later than on the day before the act comes into force and the posting continues after that day.

Provision of services by British undertakings

The objective of the legislation concerning the provision of services is to enable British entities to complete ongoing services in Poland on the terms in force to date. Therefore, in order for an undertaking from the United Kingdom to provide services in Poland, the regulations on the provision of services by an entity from the European Union will apply, but on the following conditions:

- the services are provided on the basis of an agreement concluded no later than the day before the act comes into force; and
- the legislation may be applied only during the period necessary for the provision of the services, but no later than three months from the date the act comes into force.

These rules do not apply if after the day before the act comes into force there has been an amendment to the relevant agreement resulting in a material extension of the period necessary for the provision of the services.

Recognition of qualifications

Under the new legislation, decisions to recognise professional qualifications gained in the United Kingdom that are issued before the date the act comes into force with regard to EU citizens (including British citizens) will remain in force. Proceedings initiated before that date which have not ended will continue on the terms set out in the current Act on Recognition of Qualifications Gained in Member States of the European Union, but for no longer than 42 months from the date the act comes into force. After the expiry of that period, proceedings will be discontinued. However, proceedings to recognise qualifications initiated with regard to British citizens that do not end before the date the act comes into force will be discontinued. After that date, British citizens or their family members will be able to apply to have their professional qualifications recognised on the same terms applicable to citizens of third countries.

The legislation also provides for an interim solution. EU citizens (i.e. not British citizens) will have until 31 December 2021 to file applications to have professional qualifications gained in the United Kingdom recognised in Poland. The proceedings will be conducted on the terms set out in the Act on the Terms of Recognising Professional Qualifications Gained in the Member States of the European Union. However, the duration of the proceedings in such cases is limited to 42 months.

Somewhat different terms are provided for in relation to so-called sector professions, for example architects, doctors, dentists, veterinarians, pharmacists, nurses and midwives. Decisions to recognise the qualifications of those professions issued before the date the act comes into force will remain in force and proceedings initiated before that date by EU citizens will be conducted on the basis of the existing provisions, as in the case of other professions. However, no application may be filed in the period after leaving the EU until 30 December 2021 to have such qualifications recognised on the terms of the Act on the Recognition of Qualifications Gained in EU Countries. The reason for this differentiation is that in relation to EU countries qualifications to practice sector professions are recognised automatically in connection with the harmonised training system. This regime will not be applicable to the United Kingdom once it has left the EU. Consequently, the legislation states that in the case of those professions, professional qualifications will be recognised on separate terms.

Summary

The legislation presented is mainly of an interim nature and its principal aim is to limit the adverse consequences of the United Kingdom's exit from the EU in a no deal scenario for Poland. The new legislation does not create a durable regime of privileges for the UK, in comparison to other non-EU countries but is aimed at creating conditions to enable the least problematic transition of the United Kingdom to becoming a third country vis-à-vis the EU. Once the time limits of the application of the legislation elapse, the United Kingdom and its citizens will generally be subject to the same regulations as other non-EU countries.

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