

Spanish Royal Decree Law 5/2019 of 1 March. In the event of a “no-deal” Brexit

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Background

Faced with the imminent and tangible risk that Britain might exit the EU on 29th March with no Withdrawal Agreement in place as foreseen in Article 50 of the European Treaty – a “no-deal” Brexit scenario – the Spanish Administration has published a new Royal Decree Law adopting contingency arrangements to cover such an eventuality.

Although many of the key aspects of Brexit such as customs arrangements and the status of Financial Services regulation remain undefined, this Royal Decree Law provides some sketches of the possible regimes which the administration intends to adopt in respect of such issues as citizenship and rights to work. This follows the recent bilateral accord on voting rights between Spain and the UK signed on 21st January 2019 which allows British nationals resident in Spain and Spanish nationals resident in the UK the right to vote and to stand as candidates in local municipal elections, regardless of whether the UK leaves the European Union with a withdrawal agreement or not.

Much of the new Royal Decree Law is made subject to equivalent and parallel provisions being enacted in the UK to benefit Spanish citizens who are resident in the UK.

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Residence

Currently, British nationals who are resident in Spain as European Union citizens are entitled to apply for a Registration Certificate as a *Community Resident*, or a *Permanent Community Resident* if they have been legally resident in Spain continuously during the previous five years (Royal Decree 240/2007 of 16th Feb).

The new Royal Decree Law provides that in the event of a no-deal Brexit, such certificates issued under directive 2004/38 prior to the withdrawal date will continue to have legal effect on a transitory basis.

What should British Nationals resident in Spain do?

Whether they have a Registration Certificate or not, in the event of a no-deal Brexit, British citizens should apply for a Foreigner's Identity Card before 31st December 2020 - which will then definitively document the holder's residence status in Spain.

Once issued, the Foreigner's Identity Card replaces any previous community resident's Registration Certificate.

In order to accommodate the large numbers of undocumented British nationals currently living in Spain "without papers", even those citizens who hadn't previously obtained such a Registration Certificate before the withdrawal date will be able to continue their legal residence until such time as their situation is definitively resolved by the Spanish administration on the basis of other documentation of the citizen as provided for by law.

The application process for pre-existing holders of a *Permanent* (5 year) Community Resident's certificate should be virtually automatic, whilst those with the general Community Resident's Certificate will be processed according to their residence status in line with the current general legislation.

Applications for long-term residence

British nationals resident in Spain at the date of the withdrawal are entitled to apply for a long-term foreigner's residence permit once they have been continually legally resident in Spanish territory for at least five years in accordance with the existing Organic Law 4/2000 of 11 January.

Those British nationals resident in Spain who already have a Registration Certificate of Permanent Community Resident at the date of withdrawal should apply personally to the corresponding Directorate General of Police for a *Long Term Resident* Foreigner's Identity Card with the following documents:

- Current passport

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- Receipt of payment for the corresponding application fee
- Photograph in Spanish ID card format

The issuing of the new Residence documentation will necessarily be complex as it is estimated that around 400,000 people will be affected; hence the relatively lengthy anticipated implementation period of until 31 December 2020.

Practising Professionals

Professionals located in Spain prior to the date of withdrawal who have had their British qualifications homologated in Spain, will continue to have their status recognised. The same will apply to Spanish professional qualifications homologated in the UK.

British professionals who were already practising in Spain at the date of withdrawal will be exempt from the requirement of EU nationality to access and practise their profession in Spain.

Applications for homologation of titles and recognition of professional titles obtained in the UK by both British and Spanish citizens, and in any EU member state in the case of British nationals, shall be governed by the corresponding regime existing prior to the withdrawal provided that the application is made prior to *or within five years* of the date of withdrawal.

Professional titles with automatic recognition under Directive 2013/55 and Reg 1024/2012 shall continue to enjoy recognition under existing rules, provided that the studies were initiated prior to the withdrawal date.

Social Security

British citizens who are legally resident and working in Spain subject to Spanish social security shall have the same rights and obligations under the social security system as Spanish national in accordance with Organic Law 2000/4 of 11 January and the consolidated text of the General Social Security Act approved by Legislative Royal Decree 8/2005 of 30 October.

Any persons who are legally resident and working in Spain but nevertheless subject to British Social Security law in accordance with part II of Reg 883/2004 of 29 April shall continue in that situation until the end of the corresponding period foreseen in the regulation, and thereafter shall be subject to Spanish Social Security law for periods of work/residence in Spanish territory.

Provision is also made for the continued receipt of certain social security and pension benefits subject to limitations. In general, these obligations and benefits reflect the proposed Community Regulation on the subject which is currently being developed. This regime will apply until 31 December 2020.

Healthcare

There is already in place access to public healthcare in Spain for British nationals - both those resident in Spain and also temporary visitors - as a result of extensive pre-existing bilateral arrangements. It is foreseen that those pre-existing arrangements will remain in place until at least 31st December 2020.

University Admissions

Students coming from educational establishments in the UK will continue to enjoy the admissions procedures to Spanish Universities applicable at the date of withdrawal for the academic years 2019/2020 and 2020/2021.

Driving Licences

British driving licences will be recognised for a period of 9 months after the withdrawal, during which time British nationals resident in Spain will be able to apply to exchange their UK driving licence for a Spanish one. In the case of tourists visiting temporarily, licences issued in accordance with the applicable international conventions will be recognised.