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**SMITH  
STONE  
WALTERS**

Immigration Practice

# INSIGHT

UK IMMIGRATION NEWS & VIEWS  
FROM SMITH STONE WALTERS  
SPRING 2020

Tougher rules  
when *crossing* UK  
and EU borders



# INA POST-BREXIT WORLD



*Do you remember when experts predicted that a 'millennium bug' would result in IT systems falling over when their internal clocks hit 1 January 2000? Thankfully, a globally coordinated effort ensured major disasters were averted and the so-called 'Y2K problem' fizzled out overnight.*

*21 years on, will the UK's planned EU departure on New Year's Eve provoke similar anxieties? This time no one is predicting aircraft will fall from the sky on 1 January 2021, but travellers should at least expect to face significantly tougher rules when crossing UK and EU borders.*

## **EU NATIONALS MOVING TO THE UK**

The recent symbolic announcement from the Home Secretary, Priti Patel, was unequivocal. From 1 January 2021, free movement will end and both EU and non-EU citizens will be treated equally under a revised points-based immigration system.

So as the UK welcomes the new year in to the tune of Auld Lang Syne, an estimated 400 million EU nationals will lose the automatic right to work and reside in the UK.

No exceptions will be made. From 1 January, all EU citizens seeking to work in the UK will need to demonstrate that they have a job offer from an approved sponsor, that the job offer is at the required skill and salary level, and that they speak English.

The door will therefore be shut regardless of whether you are a Danish doctor or a senior Swiss scientist – unless of course you arrive a day earlier when free movement rights will still apply.

## **ORIGINALITY IS RARE**

So will the UK's tough immigration stance be reciprocated by EU member states? Most likely.

The current Withdrawal Agreement only preserves the rights of British citizens to exercise their right to live, work and study in the EU until the end of the current transition period.

Any UK nationals resident in the EU at the end of the transition period will continue to be covered by the Withdrawal Agreement.

Their rights will therefore be protected for as long as they remain resident in that EU country.

So far so good...but what happens next year? Well, the UK government has now set a precedent that other EU countries may follow. Regardless of whether you are a national of Spain or Senegal, the same UK immigration rules will apply.

We should therefore not be too surprised to see France applying the same residency rules on new arrivals to Paris irrespective of whether you are from Norwich or New Zealand.

## **RED TAPE FOR BRITISH TOURISTS?**

Whilst some British holidaymakers may already be concerned about how long it may take to clear immigration control in Alicante next year, they would be best advised to use the time in the queue to check the validity of their own passports.

Once the current transition period ends, two new conditions will come into effect that may require British nationals to renew their passports ahead of travelling in Europe after 1 January 2021.

Firstly, external EU border officials will deem a UK passport 'expired' exactly a decade after being issued. Secondly, they will also expect all British passports to have at least 6 months validity left.

Will every British holidaymaker destined for the Swiss Alps or Canary Islands in January 2021 be aware of these requirements? Probably not. Will Spanish immigration turn a blind-eye on unintentional miscreants? No one knows.

That's probably why the UK government has started to broadcast warnings that travel to the EU (including Switzerland, Norway, Iceland and Liechtenstein) will change and is advising British nationals to check their passports will meet the new EU conditions.

To add to the confusion, British passport renewals have for a number of years been issued to include periods of unspent time remaining on the previous passport. As such, whilst a significant number of British passports will possess an expiration date extending beyond 10 years, the EU will only deem the same passport valid for 10 years from the date of issue.

## **FUTURE RELATIONSHIP**

There is no doubt the UK's future relationship with the EU will be very different from next year and it will take some time for all of us to become accustomed to it.

Freedom of movement will be resigned to history and, whilst travel between the UK and Europe may not appear to differ too much, the level of bureaucracy for those looking to put down roots in a different country will increase overnight.

Let's just hope the immigration online systems do not trip out, 21 years after they were predicted to.

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*This edition of Insight takes a look at the Schengen visa applications and includes an update on the new Global Talent visa. For regular updates on all immigration matters, make sure you subscribe to our free Immigration News Service!*

[www.smithstonewalters.com/signup](http://www.smithstonewalters.com/signup)

# THE SCHENGEN VISA

A Schengen visa is a short stay visa allowing its holder to travel easily in the Schengen area. The Schengen area covers 26 countries (“Schengen States”) without border controls between them. These countries are:

- |                           |                    |
|---------------------------|--------------------|
| <i>Austria</i>            | <i>Norway</i>      |
| <i>Belgium</i>            | <i>Poland</i>      |
| <i>the Czech Republic</i> | <i>Portugal</i>    |
| <i>Denmark</i>            | <i>Slovakia</i>    |
| <i>Estonia</i>            | <i>Slovenia</i>    |
| <i>Finland</i>            | <i>Spain</i>       |
| <i>France</i>             | <i>Sweden</i>      |
| <i>Germany</i>            | <i>Switzerland</i> |
| <i>Greece</i>             |                    |
| <i>Hungary</i>            |                    |
| <i>Iceland</i>            |                    |
| <i>Italy</i>              |                    |
| <i>Latvia</i>             |                    |
| <i>Liechtenstein</i>      |                    |
| <i>Lithuania</i>          |                    |
| <i>Luxembourg</i>         |                    |
| <i>Malta</i>              |                    |
| <i>Netherlands</i>        |                    |



## DO I NEED A VISA

Currently, citizens from 105 non-EU countries or entities need visas to travel to the EU. The list of countries includes: India, Russia and South Africa.



## APPLICATION DATE

To allow travellers to better plan their trips, Schengen visa applications can now be submitted up to six months before the intended date of travel.



## MULTIPLE ENTRY

Frequent travellers with a positive visa history are usually granted a multiple-entry visa with a validity period from one year to a maximum of five years.



## PROCESSING TIME

The EU’s targeted time for Schengen visa applications to be processed is set at 15 days. The processing time may be longer in certain circumstances.



## MEDICAL INSURANCE

Visa applicants must present valid travel medical insurance when applying for a Schengen visa.



## PLACE OF SUBMISSION

Travellers must lodge their application at the consulate of the EU country they intend to visit. If they are planning to visit several Schengen states, they should apply at the consulate of the country where they will spend the longest period.



## ELECTRONIC SUBMISSION

In an effort to save travellers time, money and hassle, certain countries now offer the ability to complete and electronically sign a Schengen visa application rather than being required to submit hard copies.



## UK-POST TRANSITION

After the United Kingdom’s withdrawal from the European Union, British citizens will remain visa-free when travelling to the EU for short stays, so the Schengen visa rules will not apply.



## ADULT VISA FEE

The visa fee has now increased from €60 to €80 per application. A lower visa fee (€35) has been set between the EU and a number of third countries, such as Armenia, Azerbaijan and Russia.



## MINOR VISA FEE

The visa fee is waived for children below six years old. The visa fee for minors between the age of six and 12 years remains half of the general fee (€40). Certain Member States can waive the visa fee for minors between the age of six and 18 years.



## BLUE IS THE COLOUR

Having issued burgundy coloured machine-readable passports since 1988, the UK government has announced a new blue passport design will start being issued from early 2020.

The blue passports will be phased in over a number of months. Anyone seeking to gain a new British passport before mid-2020 may be issued with either a blue or a burgundy passport.

All styles of passport will be equally valid for travel. Applicants will not be able to state a preference for either colour.



## WHAT'S YOUR POINT?

*From next year EU and non-EU citizens will be treated equally under the UK's points-based immigration system.*

Whilst Home Secretary, Priti Patel, proclaimed the virtues of this 'new' scheme, it would probably have been more appropriate to describe it as an extension to the existing worker route open to non-EU citizens.

All applicants will still need to demonstrate that they have a job offer from an approved sponsor, that the job offer is at the required skill level, and that they speak English. However, the big 'new' thing is this requirement will apply to EU nationals too.

UK based employers not currently approved by the Home Office to be a sponsor will therefore need to consider applying if they want to sponsor skilled migrants, including those from the EU, from early 2021.

They should also brace themselves for higher costs. The government will levy the Immigration Skills Surcharge (ISC) and the Immigration Health Surcharge (IHS) on the same basis as now. Therefore, employing an EU national under this new system for five years will attract an upfront employer levy of £5000 (ISC) and £2000 charge (IHS) to the employee. Ouch!



## NEW GLOBAL TALENT VISA OPENS

In an effort to attract top scientists, mathematicians and researchers from around the world, a new Global Talent Visa Scheme was launched on 20 February 2020.

This fast-track scheme has replaced the Tier 1 (Exceptional Talent) route and, unlike its predecessor, has no cap on the number of people able to enter the UK.

The new visa scheme is administered by the UK Research and Innovation Agency (UKRI).

Although applicants will not be required to obtain a job offer before arriving in the UK, the scheme aims to bring the world's best and brightest minds to work in the UK within key science and research teams.

All scientists and researchers who are endorsed on this route will be offered an accelerated path to UK permanent residence.



*Applicants will not be required to obtain a job offer before arriving in the UK*

## MOVING PEOPLE ACROSS BORDERS IS OUR BUSINESS

Did you know Smith Stone Walters manages and supports immigration moves throughout the UK, Europe and the rest of the world?

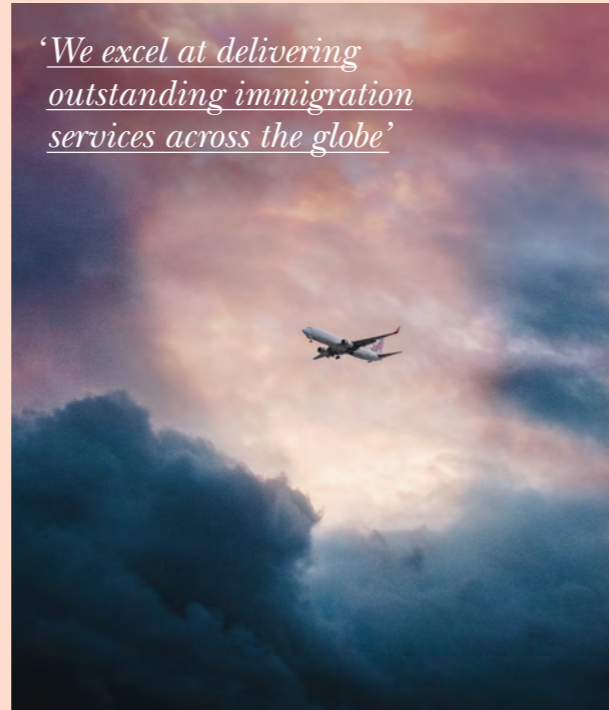
We excel at delivering outstanding immigration services across the globe.

Combining award winning client service with our API ready case management technology, we deliver a full range of global immigration solutions to our clients.

From conducting initial feasibility assessments, to managing work permit applications and providing subsequent post arrival assistance, our outstanding immigration team is primed to support your business.

*Need assistance with moving staff internationally? Then speak to one of our immigration specialists at Smith Stone Walters.*

*'We excel at delivering outstanding immigration services across the globe'*



## HEADING TO SUNNY SOUTH AFRICA?

*If you are thinking of moving an employee to South Africa, we are here to help you.*

The local immigration rules need to be followed in order to secure employment approval.

The most common employment visa routes are:

### *Intra Company Transfer (ICT):*

Where an individual is employed by a company outside SA and is being assigned to that company's legal entity in SA, they may apply for an intra company transfer work visa. ICT visas are valid for the duration of the contract of employment or a period not exceeding four years and only for the specified employer.

### *Critical skills permit:*

If the individual falls under one of the critical skills categories, they may apply for a critical skills work visa, but they must have their educational qualifications evaluated by SAQA and need to register with the relevant board/body/council in South Africa.

Critical skills work visas are issued for a period not exceeding five years. Individuals do not need a job offer to apply for the visa, and the visa enables individuals to enter and stay

in South Africa for 12 months to secure a position.

### *General work visa:*

If the individual does not qualify for any of the above-mentioned work visas, they could seek a recommendation from the Department of Labour and subsequently apply for a general work visa. General work visas are valid for the duration of the contract of employment or a period not exceeding five years.



## NEW US VISA RULES

The US President is imposing new visa restrictions on six additional countries which have failed to meet strict security criteria.

Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela and Yemen have been under such restrictions since 2017 and will now be joined by Burma, Eritrea, Kyrgyzstan, Nigeria, Sudan and Tanzania.

Not all visa types are restricted, with only certain immigrant visas being impacted. Non-immigrant visits, family visits and work are still permissible under the appropriate visa endorsements.

Although temporary, it is not confirmed when the additional restrictions might be relaxed or indeed if they may be broadened to be more restrictive or cover further countries not meeting the security risk criteria.

*'Non-immigrant visits, family visits and work are still permissible under the appropriate visa endorsements'*

The announcement does not impact those individuals already in possession of a visa, whether currently present in the US or otherwise.

*Smith Stone Walters is here to help with a wide range of visa applications to your country of choice.*



## CORONAVIRUS RESTRICTIONS

Travellers and expat managers should be primed for ongoing coronavirus related travel restrictions as more governments introduce restrictions on visa issuance as well as the ability of passengers to enter or exit their territories.

A number of states are now placing an increasing number of restrictions on travellers from those countries

deemed to be at higher risk for COVID-19. Aside from blanket bans, returning residents are also being required to self-isolate for 14 days from the time they leave certain countries.

*Smith Stone Walters' immigration specialists are on hand to provide travel advice and guidance to you and your staff. Call us today.*

# 70K VIEWS AND COUNTING!

*Our EU Settlement Scheme guide to applying for settled status has now had over 70,000 views on YouTube. [The seven minute video](#) was produced to specifically assist EU nationals and forms part of a tailor-made service offered by Smith Stone Walters to UK businesses employing EU workers.*

Given the valuable contribution EU citizens make to businesses and organisations across the UK, we urge all employers to communicate with their EU staff about the EU Settlement Scheme.

Whilst over three million EU nationals currently living in the UK have now applied for the scheme, there is still a way to go to ensure everyone registers.

If you or your EU staff need our assistance, contact one of our dedicated advisers today.



## WHAT OUR CLIENTS SAY ABOUT US!

*Our clients demand great service and we deliver. But don't take our word for it... read just some of the fantastic comments that satisfied customers have made about our services in 2020!*

“  
COURTEOUS  
HIGH STANDARD  
IMPRESSED  
SEAMLESS  
PROFESSIONAL  
RESPONSIVE  
”



*'Was such a pleasure working with Smith Stone Walters.'*

*KF, Chartered accountants*

*'Just want to say a massive thank you to Ekaterina who was such a pleasure to work with all the way!'*

*YB, Investment bank*

*'I was just delighted with the professionalism, goodwill, patience and just a desire to always help the client.'*

*AS, Telecommunications company*

*'I was impressed by their professionalism and the quality of their service.'*

*DH, Financial services company*

*'The team at Smith Stone Walters made the visa portion of a stressful move very easy and seamless.'*

*KT, Investment bank*

*'Thanks for the great work team!'*

*AK, Financial services company*

*'I will recommend working with Jack all day every day!'*

*SL, Investment bank*

*'I had a seamless, effortless process getting my visa--the team was extremely responsive to my asks and were polite and courteous. Thanks for your hard work!'*

*TZ, Global consulting firm*

*'Betty was extremely helpful and very professional. She was everything we could have hoped for and have already recommended her and your company to our friends.'*

*WW, Private client*



*At any given time, it is estimated that over 2 million staff are working on assignment around Europe under the EU's Posting of Workers Directives. Although these rules allow workers the opportunity to undertake temporary employment in other EU countries, they also trigger an increasing number of compliance requirements for employers.*

*Our focus this month is on...posted workers.*



### *What is a posted worker?*

A posted worker is a worker who, for a limited period, carries out his work in the territory of an EU Member State other than the State in which he normally works.

*An example of a posted worker would be a German national engineer employed by a firm in Berlin being sent by her employer to work on a chemical engineering project for a client in Spain for eight weeks.*

*In this scenario, as the EU national is employed in an EU member state and being sent by her employer to work in another EU member state on a client project, posted worker requirements would apply.*

From a company's perspective, the posted worker route is usually possible in the following scenarios:

- your business has a contract with business partners in other EU countries and your staff need to go to that EU country for a specific period for the purposes of providing services
- you send a staff member to a business you own in another EU country

Posting rules can also apply if the person is hired through a temporary employment agency and is coming to work for you from a different EU country than that where a business is registered or is operating. In this case, the employment relationship will exist between the worker and the placement agency.

### *Business visitor vs. posted worker*

Not all workers who are sent for a limited time to another Member State are considered posted workers.

In general, posting directives would not normally be applicable to those workers on business trips (when no service is provided), attending conferences, fairs etc.

Employers therefore regularly face the challenge of determining whether a worker is genuinely required to conduct a business trip or whether their time spent within another EU Member State will incorporate work or the delivery of a service and therefore invoke posted worker requirements.

### *Can a third-country national be posted?*

Yes, if the third-country national is legally residing and working in a Member State, the employer can post that worker to another Member State under the same conditions as an EU national.

### *Can recently recruited employees be posted?*

The Directive simply requires that an employment relationship is maintained between the employer and the employee throughout the duration of the posting.

Therefore, even workers recently engaged by a Member State can be considered for postings.

### *What requirements must be met?*

A fundamental requirement of the Directive is to ensure that, when workers are posted from one EU country to another, they will receive the same working conditions afforded to local employees.

These protections include minimum rates of pay including overtime rates; minimum paid leave; maximum and minimum rest periods and equal health, safety and hygiene at work rights.

Aside from guaranteeing rights to employees, many EU countries place an obligation on foreign employers to report postings before the first day of work and nominate a designated person to liaise with the local authorities in the host Member State.

Not all Member States have adopted a common policy towards reporting. Employers must therefore fulfil a variety of different processes depending on where their posted workers are based.

*The French authorities, for example, require companies to comply with a number of compulsory conditions and formalities when posting workers in France. These include sending a declaration of posting to the Labour Inspectorate prior to the commencement of the posting.*

### *Where can I find more information?*

Each Member State is obliged to summarise local posted worker information on a single national website.

The information provided is free of charge and includes the terms and conditions of employment to be applied to workers posted in their territory.

*Need assistance on moving staff into Europe? Then speak to one of our immigration specialists at Smith Stone Walters.*



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