

LEGAL STATUS OF BRITISH CITIZENS IN SPAIN

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Since 31 January 2020, the United Kingdom of Great Britain and Northern Ireland (hereinafter, United Kingdom) ceased to be a Member State of the European Union (hereinafter, EU) and became a third country, following the ratification of the Withdrawal Agreement of the United Kingdom from the European Union and the European Atomic Energy Community (hereinafter, the Withdrawal Agreement).

For its part, the Withdrawal Agreement entered into force on the day following its ratification, i.e., on 1 February 2020, establishing various provisions to ensure that the United Kingdom's withdrawal took place in an orderly manner, for which a transitional period was provided to allow for a regulated adaptation to this change of status, which remained in force until 31 December 2020.

Therefore, on 1 January 2021, Spanish national legislation applicable to third countries began to apply to UK citizens, as well as the specific regulations for beneficiaries of the Withdrawal Agreement, as we will see below.

I.- THE WITHDRAWAL AGREEMENT

What consequences did the United Kingdom's departure from the European Union have for British citizens residing in Spain?

Once the transition period granted by the Withdrawal Agreement ended (1 January 2021), British citizens who were in our national territory could choose one of the following options: to be beneficiaries of the Withdrawal Agreement, or not to be beneficiaries and remain under our national legislation on foreign nationals.

Consequently, those arriving in Spain after the date of the Withdrawal Agreement (1 January 2021), had to apply for the relevant residence permit in accordance with national immigration law, as if they were from a third country, unless they could prove that they were beneficiaries of the Agreement.

Who is covered by the Withdrawal Agreement?

The Withdrawal Agreement covers British citizens who were residing in our national territory before the end of the transition period (31 December 2020) and continued to reside there after its end; as well as their family members, provided that they were part of the family before the end of the transition period.

There is an exception for children born in the future to parents who are beneficiaries of the Withdrawal Agreement, who are also covered by the Agreement, even if they have never acquired resident status as such.

What position did Spain adopt with regard to UK nationals in order for them to be recognised as beneficiaries of the Withdrawal Agreement?

The Withdrawal Agreement offered two options to Member States:

- Require UK citizens, their family members and any other persons residing on their territory to apply for a new residence status.
- Not require the application referred to in the previous paragraph, but issue a specific document certifying residence, stating that it has been granted in accordance with the Withdrawal Agreement.

Our country, for its part, opted for the second alternative and, therefore, British citizens, once they had proven their status as beneficiaries of the Withdrawal Agreement, were able to apply for a Foreigner's Identity Card

(TIE) recognising them as legal residents benefiting from the Withdrawal Agreement.

2.- FOREIGNER'S IDENTITY CARD (TIE)

How to apply for the Foreigner's Identity Card (TIE) that recognises you as a legal resident benefiting from the Withdrawal Agreement for UK nationals?

This procedure can be carried out in two ways, depending on whether or not they are registered in the Central Register of Foreigners for citizens of a Member State of the European Union or of another State party to the Agreement on the European Economic Area, intended for those who are going to reside in Spain for a period exceeding three months.

I.- I am registered in the Central Register of Foreigners (Green Card)

For their part, those who are registered in the Central Register of Foreigners (colloquially known as the Green Card), will simply have to make an appointment at the National Police Station to complete the procedure in order to obtain their new Foreigners' Identity Card (TIE) as beneficiaries of the Withdrawal Agreement.

But... am I still in time to apply?

Yes, applications to replace the old NIE «Green Card» with which some British citizens currently reside in our country with the new Foreigner's Identity Card (TIE), can be submitted at any time. We must remember that **British citizens who were residing in Spain before the end of the transition period (31 December 2020) and who have continued to reside in our territory after its end must provide proof of this.**

II.- I am not registered in the Central Register of Foreigners

On the other hand, British citizens who are not registered in the Central Register of Foreigners will have to complete a preliminary procedure at the Foreigner's Office corresponding to their place of residence in order to obtain their new Foreigner's Identity Card (TIE) under the Withdrawal Agreement. Once residence has been

granted, they must go to the National Police Station to obtain the TIE.

3.- RESIDENCY AND TEMPORARY STAY

3.1.- RESIDENCY

How do I obtain residency from the Foreigner's Office?

By submitting an application to the Foreigner's Office in the province where you reside, either in person or electronically. If you choose the electronic option, you must have an electronic signature system.

What must I include with my application to prove that I was residing in Spain before the transition period of the Withdrawal Agreement?

Residency in our national territory prior to 31 December 2020 may be proven by any means of evidence valid in law, i.e., British citizens may use any documentation they have to prove this, such as: bills for various utilities (electricity, water, gas, telephone, internet); bank statements showing charges for fuel, meals in restaurants, regular supermarket purchases, gym membership, purchase of tickets for events; proof of medical attendance, etc.

Can any British citizen submit it?

No, only those who can prove that they were residing in Spain before the end of the transition period of the Withdrawal Agreement (31 December 2020). Remember that this is a **special procedure for British citizens who are beneficiaries of the Withdrawal Agreement**, which means that not all them can apply through this channel.

How long will it take the Foreigner's Office to respond to my application?

The legally established deadline for resolving the application is three months from the date on which all the documentation was submitted. Once residency has been granted, as indicated above, you must apply for the Foreigner's Identity Card (TIE) for beneficiaries of the Withdrawal Agreement within one month of notification of the grant, by making an appointment at any police station in the province of residence.

If the Foreigner's Office rejects my application for residency, can I appeal?

If the application for residency is rejected, it may be appealed through administrative channels, i.e., before the same administration that rejected it, stating the reasons for contesting the rejection. If the appeal is dismissed, the applicant may lodge a contentious-administrative appeal against the dismissal before the Contentious-Administrative Court of the judicial district in which the Foreigner's Office is located, in the same terms as the appeal, i.e., stating the reasons why they consider that the decision appealed against is not in accordance with the law, accompanied by the evidence on which they intend to rely.

However, in accordance with its obligations, the administration must indicate, in the decisions it issues, the appeals that may be lodged against them (if applicable), as well as the deadlines for lodging them and the body to which they should be submitted.

Once I have obtained the residency permit from the Foreigner's Office, what should I do?

As indicated above, you must make an appointment at any police station in the province where you live to get the Foreigner's Identity Card (TIE) under the Withdrawal Agreement.

Can someone else go on my behalf?

No, this procedure must be carried out in person, as before the Foreigner's Identity Card (TIE) beneficiary of the Withdrawal Agreement can be issued, the applicant's fingerprints must be taken, which means that no one else can do it on their behalf.

Do I have to pay for the procedure?

No fee is payable for applying for residency at the Foreigner's Office, i.e., this procedure is not subject to any fees. However, a fee of €12 (TWELVE EUROS) must be paid for the Foreigner's Identity Card (TIE) for beneficiaries of the Withdrawal Agreement, using form 790.

Is there a deadline for applying?

As indicated in previous sections, applications to replace the old NIE «Green Card», with which some British citizens currently continue to reside

in our country, with the new Foreigner's Identity Card (TIE), may be submitted at any time.

However, the new European Union external border crossing systems (EES: Entry/Exit System and ETIAS: European Travel Information and Authorisation System) are scheduled to come into force, meaning that the new **Foreigner's Identity Card (TIE) will be the only document that allows beneficiaries of the Withdrawal Agreement to benefit from exemption from registration in these systems**, which is why it is very important to apply for it as soon as possible. Consequently, the way to guarantee the special regime as beneficiaries of the Withdrawal Agreement will be by obtaining the Foreigner's Identity Card (TIE) «Art.50 TEU».

To continue working or studying in Spain as a beneficiary of the Withdrawal Agreement, was it necessary to obtain additional authorisation to the TIE?

The answer is no, since the Withdrawal Agreement specifically provided for all such circumstances in order to avoid affecting British citizens who were going to reside or continue to reside in the Member States, so that they could continue working or studying as they had been doing, in accordance with Union Law.

Did the granting of the TIE as a beneficiary of the Withdrawal Agreement grant British citizens residency in any EU Member State other than Spain?

As indicated in previous sections, each Member State could choose the transition model to apply, so residency obtained in one of these did not grant the right to reside in the rest, but only in the host country – in our case, Spain. Therefore, in order to stay for more than three months in any country other than the one that had granted the TIE, they had to regularise their situation in that country, in accordance with its regulations.

What types of temporary residencies can I apply for?

British citizens, like other third-country nationals with temporary residency status, may hold one of the following types of permits:

- a) Temporary residency permit for non-lucrative purposes.
- b) Temporary residency permit for family reunification.
- c) Temporary residency permit for employment.

- d) Temporary residency permit for research.
- e) Temporary residency permit for highly qualified professionals holding an EU Blue Card.
- f) Temporary residency permit for fixed-term employment.
- g) Temporary residency and self-employment permit.
- h) Temporary residency and work permit within the framework of transnational service provision.
- i) Temporary residency permit with exemption from work permit.

What requirements must I meet to obtain temporary residency?

- You must have no criminal record in Spain or in previous countries of residency for crimes under Spanish law.
- You must not be listed as inadmissible in the territory of countries with which Spain has signed an agreement to that effect.

Once my temporary residency has expired, can I apply for another type of residency?

Yes, you can apply for long-term residency, which is the status that allows you to live and work in Spain indefinitely, under the same conditions as Spanish nationals.

Who can benefit from long-term residency?

Foreign nationals who have had temporary residency in Spain for five consecutive years are entitled to long-term residency. For the purposes of obtaining long-term residency, periods of previous and continuous residency in other Member States as a holder of an EU Blue Card will be taken into account. Residency will be considered continuous even if the foreign national has left the national territory temporarily for holidays or other reasons.

Likewise, long-term residency permits will also be granted to foreigners who can prove that they are in any of the following situations:

- a) Residents who are beneficiaries of a contributory retirement pension included within the protective action of the Spanish Social Security System.
- b) Residents who are beneficiaries of a permanent total disability or severe disability pension, in its contributory form, included within the protective action of the Spanish Social Security System or benefits similar to those obtained in Spain and consisting of a life annuity sufficient for their maintenance.
- c) Residents who were born in Spain and, upon reaching the age of majority, have resided in Spain legally and continuously for at least the three consecutive years immediately prior to the application.
- d) Foreigners who were originally Spanish and have lost their Spanish nationality.
- e) Residents who, upon reaching the age of majority, have been under the guardianship of a Spanish public entity for the five immediately preceding years in a consecutive basis.
- f) Stateless persons, refugees or beneficiaries of subsidiary protection who are in Spanish territory and have been recognised as such in Spain.
- g) Foreigners who have made a notable contribution to the economic, scientific or cultural progress in Spain, or to the projection of Spain abroad.

If I am a long-term resident in an EU Member State, can I apply for long-term residency in Spain?

Yes, you can apply for it yourself and obtain a long-term residency permit in Spain when you are going to carry out an activity as a self-employed person or as an employee, or for other purposes, under the conditions established at the time of your application.

However, if long-term residents of another EU Member State wish to retain their long-term resident status acquired in the first Member State, they may apply for and obtain a temporary residency permit in Spain.

When does long-term residency expire?

It will expire in the following cases:

- a) When the permit has been obtained fraudulently.
- b) When an expulsion order has been issued.
- c) When the person has been absent from the territory of the European Union for 12 consecutive months.
- d) When long-term residency has been acquired in another Member State.
- e) When, after authorisation has been obtained by a person who has been granted international protection by another Member State, the authorities of that State have decided to terminate or revoke that protection.

Is the termination of long-term residency irrevocable?

No, foreigners who have lost their long-term resident status may regain that status through a simplified procedure, which will apply in particular to persons who have resided in another Member State for the purpose of studying.

3.2.- TEMPORARY STAY

If I am not covered by the Withdrawal Agreement, can I travel to Spain and regularise my situation?

According to current legislation, British citizens wishing to enter Spain must do so through the designated border control points and be in possession of a passport or travel document proving their identity. They do not need to apply for a visa. Once in Spain, British citizens may find themselves in one of two situations: temporary stay or residency.

As a general rule, foreigners who do not hold a residency permit and are authorised to remain in Spain for an uninterrupted period or a series of successive periods not exceeding a total of ninety days per six-month period from the date of first entry are considered to be in a situation of

temporary stay. After this period, in order to remain in Spain, it will be necessary to obtain either an extension of stay or a residency permit.

However, there are exceptions to this rule, whereby a foreign national may be authorised to remain in the country on a temporary basis when their sole or main purpose is to carry out one of the following non-work-related activities:

- a) Pursue or further studies.
- b) Carry out research or training activities, without prejudice to the special regime for researchers.
- c) Participate in student exchange programmes at any officially recognised public or private educational or scientific centres.
- d) Carry out non-work experience.
- e) Carry out voluntary services.

For obvious reasons, the authorisation will be valid for the duration of the course for which the student is enrolled, or for the duration of any research work, student exchange, internship or voluntary service.

Can this residence status be extended?

The permit shall be extended for a maximum of one year for each extension, under the terms and for the periods specified for each activity, provided that the holder demonstrates that they continue to meet the conditions required in the initial permit and that they comply with the general requirements and the specific requirements for each activity.

Can I work if I am in a temporary stay situation?

Foreigners admitted for study, non-work experience or voluntary work may be authorised to engage in paid activity on a self-employed or employed basis, provided that this does not limit the continuation of their studies or similar activity, and that the working week does not exceed 30 hours.

Once my temporary stay has ended, can I regularise my situation?

Yes, you can regularise your situation by applying for a temporary residency permit if you are a British citizen and intend to stay in Spain for more than 90 days and less than five years. Permits for less than five years may be renewed at the request of the interested party, depending on the circumstances that led to their initial granting.

Can I be denied entry into Spanish territory?

Foreign nationals will be denied entry and prevented from accessing Spanish territory, even if they meet the requirements set out in the preceding articles, when:

- a)** They have previously been expelled from Spain and are within the period of prohibition of entry determined in the expulsion decision, or when an expulsion decision has been issued against them.
- b)** They have been subject to a return measure and are within the period of prohibition of entry determined in the corresponding return agreement.
- c)** It is known, through diplomatic channels, Interpol or any other means of international, judicial or police cooperation, that they are wanted by the judicial or police authorities of other countries, provided that the acts for which they are wanted constitute an offence in Spain and without prejudice to their arrest, where appropriate.
- d)** They have been expressly prohibited from entering the country by a decision of the Minister of the Interior, due to activities contrary to Spanish interests or human rights, or due to their notorious connections with national or international criminal organisations, or for other judicial or administrative reasons that justify the adoption of this measure, without prejudice to their arrest, where appropriate.
- e)** They have been prohibited from entering under international agreements to which Spain is a party or in accordance with Community legislation, unless an exception is deemed necessary on humanitarian grounds or in the national interest.

4. LINKS OF INTEREST

- <https://www.inclusion.gob.es/brexit/residencia/en-espana-a-31-12-2020>
- [guia-brexit-eng-sept-24-pdf](#)
- <https://turismo.gob.es/es-es/brexit-turismo/Paginas/brexit-turismo.aspx>
- https://sede.policia.gob.es/Tasa790_012/ (form 790)
- <https://www.mjusticia.gob.es/es/ciudadania/formulario-790>
- <https://www.ciudadanosextranjeros.es/wp-content/uploads/2024/03/OK-REG-JURIDICO-DE-LOS-EXTRANJEROS-EN-ESPANA.pdf>
- <https://www.ciudadanosextranjeros.es/wp-content/uploads/2024/03/OK-REG-JURIDICO-DE-LOS-EXTRANJEROS-EN-ESPANA-EN.pdf>

5. REFERENCE LEGISLATION

- Royal Decree-law 38/2020, of 29 December adopting measures for adaptation to the situation of the United Kingdom of Great Britain and Northern Ireland as a third country following the end of the transition period provided for in the Withdrawal Agreement of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, of 31 January 2020.
- Organic Law 4/2000, of 11 January, on the Rights and Freedoms of Foreigners in Spain and their Social Integration.
- Royal Decree 557/2011, of 20 April, approving the Regulation of Organic Law 4/2000, on the Rights and Freedoms of Foreigners in Spain and their Social Integration, following its reform by Organic Law 2/2009.

6. GLOSSARY

- **Contributory modality:** refers to those who receive a financial benefit after having contributed during their working life in order to be eligible for it.
- **Life annuity:** a financial product that, after an initial contribution or through repeated periodic payments, provides the beneficiary with a fixed income until their death.

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INTERNATIONAL RESIDENTS UNIT

Diputación de Alicante

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