

# Italy - Rights of UK Citizens Post-Transition Period: Some Clarity, Some Ambiguity

## Brexit Updates

26 November 2020



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With less than two months to go to the end of the Brexit transition period on 31 December 2020, Italy's government has still not yet published any official rules regarding the status of British citizens arriving to work in Italy after that date. Regulations have been published regarding the status of British citizens resident in Italy before 31 December.

### Why this matters

It is crucial for businesses intending to send employees with British citizenship to Italy on a temporary or permanent basis in 2021 to understand the requirements around documentation and other matters that allow them to reside legally in Italy for work (and family) reasons, while also being cognizant of the absence of detailed immigration and administrative procedures, which can make planning rather difficult for them. Added to this is the continued uncertainty regarding the social security status of British citizens seconded to Italy after 1 January 2021.

British citizens who are already in Italy must make sure that by the end of the transition period they:

- are compliant with what current law envisages for them, and
- obtain the necessary documents to prove their legal stay in Italy and secure their rights.

## UK Citizens in Italy at End of Transition Period

Until 31 December 2020, UK citizens can continue to live and work in Italy as they are currently doing.<sup>(1)</sup> Before 31 December 2020, all UK citizens currently in Italy for work reasons and their family members who live permanently in Italy and who intend to continue to live here in 2021 need to:

- register at the Italian local council in Italy where they live;
- obtain a new document called '*attestazione di iscrizione anagrafica*' from the local council in Italy where they have registered (this is a very important document for British citizens).

(1) See Foreign & Commonwealth Office, '[Guidance: Living in Italy](#)'.

The registration process (point 1), is mandatory for stays in Italy longer than 90 days consecutively.<sup>(2)</sup>

The '*attestazione*' can be obtained after registration at the local council (point 1) is complete. Some local councils may apply different rules.

The '*attestazione di iscrizione anagrafica*' is a document created expressly for UK citizens that are or will be registered by the end of the transition period and this document confirms their 'protected' status under the Withdrawal Agreement. It is an important document as it refers explicitly to the status of UK citizens according to article 18.4 of the Withdrawal Agreement. UK nationals living in Italy before 31 December have a right to the new document. Other documents (for example the normal certificate of residence) do not refer explicitly to UK citizens and the Withdrawal Agreement.<sup>(3)</sup> Therefore, UK citizens should check they are in possession of the right documentation.

### Residency Rights

As long as the individual can prove that he/she was lawfully living in Italy by the end of the year, then the individual's rights will be covered by the Withdrawal Agreement. However, they should try to register as soon as possible before 31 December to remove any doubt – registration is the only unequivocal proof.

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### KPMG NOTE

Individuals should bear in mind the current difficulties in accessing Italian public offices and the inherent delays caused by the current COVID crisis.

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### UK citizens in Italy for less than five years and those in Italy for at least five years

Residency rights will be granted to those citizens who will have complied with the above indications by the end of the transition period.

UK citizens who have been registered in Italy for **less** than five years will be entitled to a status of temporary residency and, based on this, they will be entitled to accrue the five-year period of residency in order to obtain the status of permanent residency. As residents in Italy, their rights will be protected under the Withdrawal Agreement and the individual can continue to work in Italy after 31 December without any further restrictions.

UK citizens who have been continuously registered with a local council for the **past five years (at least)** can obtain an '*attestazione di soggiorno permanente*' and are considered as 'permanent residents'. As a permanent resident, these rights will be granted as long as an individual spends less than five consecutive years outside of Italy.

### Working Rights

UK citizens who will be registered at a local council before the end of the transition period and will continue to be registered after its end, will be granted the right to continue to work as they have been doing. If they become involuntarily unemployed, UK citizens who have been compliant with registration at the local council can retain their worker status for six months. As this is in the scope of the Withdrawal Agreement, this means that UK nationals can continue to access unemployment benefits in Italy.

### UK Citizens Arriving in Italy after 31 December

The Italian authorities have not enacted any official laws or provided any official guidance about the treatment of UK citizens coming to Italy for work reasons after 1 January 2021.

From 1 January 2021, it should be possible to travel to Italy for up to 90 days in any 180-day period without a visa, for purposes such as tourism or business (according to the normal Schengen rules).

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### KPMG NOTE

This should mean that UK citizens will still be able to make business trips to Italy, for example for meeting, conferences, trade fairs, etc. They will have to take account of the total number of days spent in Italy and the rest of the Schengen Area. They will not be able to undertake paid employment in Italy during that 90-day period. (Confirmation of this is expected to be made clear when official laws are enacted.)

For longer periods, and to enter Italy for employment, it is anticipated that UK citizens will require a work permit/ visa. They may also need to get a visa if their visit will last more than 90 days in any 180-day period.

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### Length of Residency as a Requirement for Citizenship Application

Residency is a key requirement in order to apply for Italian citizenship. Whereas the procedure for EU citizens applying for it only requires four years of continuous official residency in Italy, non-EU citizens must prove 10 continuous years of living in Italy via proper official documents.<sup>(4)</sup>

(2) Legislative Decree no. 30 of 6 February 2007, which implements Directive 2014/38/EC.

(3) Circular no. 3 of 11 February 2020. Brexit – Ratification and entry into force of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union Guidance.

(4) Law no. 91/1992.

Applications filed by UK citizens by 31 December 2020 will still be treated as if they were filed by EU citizens and so the four-year period of residence will apply. Applications from UK citizens filed after the end of the transition period could be deemed to be made by non-EU citizens and in this case the 10-year period of residence would be a requirement.

## Social Security

Unless an agreement is reached by 31 December 2020, from 1 January 2021 UK citizens seconded to Italy or taking up an employment partly carried out in Italy will become liable to Italian Social Security. This can only be paid by the legal employer, so a UK employer assigning employees to Italy will potentially have to register a social security position in Italy, which can be a long and complex process. Of concern will be whether, after 1 January 2021, the Italian authorities will require apostilled documents from the United Kingdom.

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### KPMG NOTE

#### Awareness of Documentation Requirements and Costs for Assignments

U.K. employers would be advised as a precaution to familiarise themselves with the documents likely to be required for Italian Social Security purposes. In cost terms, Italian employer social contributions are substantially higher (at circa 30%) than U.K. contributions and this will have an effect on the cost of assignments to Italy.

#### Absence of Clarity in Relation to A1s

For employees already in Italy, the position is unclear. Technically these employees should be protected by the Withdrawal Agreement and so their social security status should not change. UK A1 certificates expiring after 1 January 2021 should continue to be valid and even capable of renewal, providing the employee's circumstances do not change. However, it appears that in practice the Italian Social Security Authority (INPS) may be regarding UK A1 certificates as having validity only until 31 December 2020 and not allowing extensions. This is a controversial policy at variance with the Withdrawal Agreement, so it remains to be seen how the situation develops.

## Considerations for Going Forward

Employers will want to plan and schedule assignments to Italy starting in 2021. The current uncertainty regarding proposed immigration rules and social security make the planning and costing of future assignments to Italy difficult. It has still not been decided if UK citizens will be considered as third-country nationals requiring a work permit and an entry visa before entering Italy and a residence permit once in Italy - or if a special category will be created (for instance, Swiss citizens and citizens of San Marino are not EU citizens but have a very similar status). Employers may be left with little time to obtain the necessary documents to send UK citizens to Italy and this is also taking longer than normal because of the continuing COVID-19 crisis.

In the absence of any agreement between the UK and EU on social security after 1 January 2021, it is possible, in a worst case scenario, that Italian contributions might be due, involving UK employers in potentially long and complex social security registration procedures.

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