

## Working with Switzerland after the Brexit transition (Update January 2021)

*Note: this document is for information only and you should not make key life decisions without seeking professional advice.*

Both Switzerland and the UK are very keen to replicate existing arrangements as far as possible, with the exception (at this stage) of free movement of people. Like the UK, Switzerland has some strong anti-immigration sentiment, not least from the point of view of wage dumping, but in autumn 2020 voted overwhelmingly \*not\* to scrap freedom of movement with the EU, which would also have terminated all six of the remaining bilateral agreements that came into force in 2002 (Bilateral Agreements I<sup>1</sup>), under a guillotine clause.

### **Brexit:**

Switzerland's government developed a Brexit strategy very early on (called "Mind the Gap") and an agreement - similar to, and in some ways better than, the EU Withdrawal Agreement - was signed in February 2019. Here is the primary text:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/767003/Agreement\\_between\\_the\\_United\\_Kingdom\\_of\\_Great\\_Britain\\_and\\_Northern\\_Ireland\\_and\\_the\\_Swiss\\_Confederation\\_on\\_citizens\\_rights\\_following\\_the\\_withdrawal\\_of\\_the\\_United\\_Kingdom\\_from\\_the\\_European\\_Union\\_and\\_the\\_Free\\_Movement\\_of\\_Persons\\_Agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/767003/Agreement_between_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_and_the_Swiss_Confederation_on_citizens_rights_following_the_withdrawal_of_the_United_Kingdom_from_the_European_Union_and_the_Free_Movement_of_Persons_Agreement.pdf)

### **Residence and work:**

Anyone who was already registered as resident in Switzerland by 31 December 2020 will retain their right of residence and other rights as if they were EU citizens (including national validity of their permits and geographic mobility within Switzerland that usually only applies to EU citizens). They will also be able to apply for permanent residence (C-permit) after 5 years in the same way as at present (rather than the more stringent 10-year rule for most TCNs). British C-permit holders covered by the agreement will also be able to leave the country for up to 4 years without losing their residence rights or status (previously max. 2 years and only on application for a few specific reasons).

With effect from 1 January 2021, non-resident British citizens have become ordinary third-country nationals in Switzerland and subject to the work permit<sup>2</sup> rules for TCNs, under which, by law, precedence in recruitment must be given to Swiss nationals, existing residents with valid permits and non-resident EU/EEA/EFTA nationals. This means that non-resident UK citizens applying for jobs in Switzerland now go to the back of the recruitment queue along with US, AUS, NZ, SA etc. Moreover, the rules for TCNs under which self-employment is not permitted until permanent residence (C-permit) is achieved (unless married to a C-permit holder or Swiss citizen) is likely once again to apply to newly arrived UK nationals in the same way as it did before the bilateral agreements came into force in 2002.

However, a separate quota of 3500 new permits has been ring-fenced exclusively for British citizens in 2021, numbering 2100 B-permits (ordinary residence, annual permits granted for contracts of unlimited duration or at least over 12 months) and 1400 L-permits (short-term permits for contracts of up to 12 months or issued when the B-permit quota runs out). This quota has been set at the level of average migration flows from the UK over the past few years and family reunification permits do not count against the quota. To put the figures in context, the British Embassy in Switzerland cites the number of UK citizens living in Switzerland as 40,000. The labour market is a cantonal competence, but there is no information as yet as to how the B-permits and L-permits have been allocated across the cantons.

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<sup>1</sup> <https://www.eda.admin.ch/dea/en/home/europapolitik/ueberblick/bilaterale-1.html>

<sup>2</sup> It should be noted that in Switzerland, it is residence permits that are granted, and a right to work may or may not be attached to it. There are not separate work and residence permits.

In other words, for 2021 at least, whilst UK citizens are subject to the normal TCN recruitment laws, they are not in competition for permits with other TCNs.

In principle, until permanent residence (C-permit) is achieved, permits for third-country nationals are often (but not always, in the case of B-permits) tied to the job for which they entered Switzerland. TCNs must also generally live in the canton in which they work, apart from exceptional cases. This is not least because taxation is local (only 1/3 of tax is federal), and if a canton is going to issue a permit, it wants the permit-holder's taxes too.

There is no information at this stage (and not urgent for five years) whether UK citizens not covered by the citizens' rights agreement will be included as one of the nationalities eligible for an early C-permit after five years.

Here is some general information on admission of non-EU/EFTA nationals to the Swiss labour market:

[https://www.sem.admin.ch/sem/en/home/themen/arbeit/nicht-eu\\_efta-angehoerige/grundlagen\\_zur\\_arbeitsmarktzulassung.html](https://www.sem.admin.ch/sem/en/home/themen/arbeit/nicht-eu_efta-angehoerige/grundlagen_zur_arbeitsmarktzulassung.html)

And here are some FAQs:

<https://www.sem.admin.ch/sem/en/home/themen/arbeit/faq.html>

**N.B.** whereas EU citizens apply for their permit directly with their municipality's residents' office on the basis of their employment contract, it is the employer that has to apply for a work permit for a third-country national and has to submit lots of paperwork, some of which needs to be provided by the employee (birth certificates no more than 6 months old, debt records etc.). Non-EU citizens are not allowed to move to Switzerland just to look for work; entry for work purposes (except for short business trips) is only permitted with a signed job offer in hand.

#### **Family reunification – those covered by the UK-CH citizens' rights agreement:**

Non-resident spouses<sup>3</sup>, and children up to the age of 21 or dependent, of British citizens who had registered in Switzerland prior to 31 December 2020, will be permitted to join their family member in Switzerland (and vice versa for Swiss citizens in the UK) now the transition has ended. This is regardless of the nationality of the spouse, child or dependent. The same applies to dependent family members in the ascending line, but the dependency must be demonstrated as before. In the case of spouses, the right to reunification applies providing they were married before 31 December 2020 (with no time limit for subsequent reunification) or marry and apply for residence within five years after the end of transition. If you marry your spouse in the five years after the end of transition but don't apply for them to join you until after that deadline, TCN rules apply.

See Article 10 pages 5-7 of the primary text.

#### **Family reunification – new arrivals:**

Family reunification is not an entitlement for non-EU/EFTA B- and L-permit holders and is subject to cantonal approval. This is practically always granted for B-permit holders, more exceptionally so for L-permit holders. Spouses are granted the same type of permit as the main permit-holder. Those on a B-permit are usually allowed to work (subject to self-employment rules); those on an L-permit are often not allowed to work. It should also be noted that spouse permits expire when the main permit-holder's permit expires. This means that if a spouse is working, they will have to leave their job and the country along with the main permit-holder unless their employer can get the permit converted into an independent one.

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<sup>3</sup> For immigration purposes in Switzerland, the term spouse includes registered same-sex civil partners.

Now that UK citizens are TCNs, new arrivals are subject to the language requirement attached to family reunification. The main permit-holder (i.e. the person whose job triggered the move) is exempt; however spouses and adult dependents now need to hold an A1 certificate (at least spoken) in the official language of their canton or provide evidence that they have enrolled in a language course to achieve that level. Children are exempt as they will go to school and will be taught the language there.

This is only a requirement for those on B-permits (ordinary residence, annual renewal) but doesn't apply to L-permits (short-term). Separate language requirements apply for C-permit applications (permanent residence).

**N.B.** Under the terms of both the UK-CH citizens' rights agreement and the rules for third-country nationals, it is wise to work on the basis that family reunification only applies to married couples and registered civil partners, and not to unmarried, cohabiting couples. Whilst some cantons offer what are known as "concubine" permits, this is not universal nationally, and the terms are onerous as the Swiss resident (even if a Swiss citizen) must undertake to support their partner financially for five years even if the relationship breaks down.

### **UK/CH cross-border service provision:**

The UK and Switzerland signed a services mobility agreement on 14 December 2020, lasting for two years in the first instance, that continues to allow in-person cross-border services to be provided in a wide range of fields (including translation and interpreting).

The agreement allows for up to 90 days' actual work per annum in Switzerland for UK citizens without a permit (subject only to the existing notification system<sup>4</sup>) and up to 12 months' work in two years in the UK for Swiss citizens *and permanent residents*. This is subject to the same conditions of qualifications and experience as in the UK-EU Trade and Co-operation Agreement (TCA or "Brexit deal"). **N.B.** the Swiss agreement only covers service providers and does not apply to short-term employment contracts of less than three months, for which an L-permit must be procured by the employer.

Clarification re "actual work": an interpreter who travels to Switzerland on Monday for one-day assignments on Tuesday and Thursday and leaves again on Friday uses 2 of their 90 work days on Tuesday and Thursday, and 3 days of their Schengen tourist days on Monday, Wednesday and Friday.

Here is the primary text of the agreement:

<https://www.news.admin.ch/news/message/attachments/64471.pdf>

As with the UK-EU TCA, there is a question mark over work via language service providers (owing to the absence of any definition of the term "agencies for placement and supply services of personnel"). We hope to be able to update this in due course.

TCNs (including British nationals) can also be deployed to Switzerland for up to 90 days a year by an employer established in the EU/EFTA (existing law) or established in the UK (under the new UK-CH services mobility agreement) provided that the TCN or British national has lived in that country for at least 12 months. This does **not** apply to the self-employed.

Here is some general info on working in CH as a TCN (i.e. for UK citizens from 1 January 2021):

[https://www.sem.admin.ch/sem/en/home/themen/arbeit/nicht-eu\\_efta-angehoerige/grundlagen\\_zur\\_arbeitsmarktzulassung.html](https://www.sem.admin.ch/sem/en/home/themen/arbeit/nicht-eu_efta-angehoerige/grundlagen_zur_arbeitsmarktzulassung.html)

**N.B.:** Switzerland allows TCNs to work without a permit for up to 8 working days per calendar year - see page 4 of this brochure:

<https://www.sem.admin.ch/dam/sem/en/data/arbeit/drittstaaten/arbeiten-in-ch-e.pdf.download.pdf/arbeiten-in-ch-e.pdf>

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<sup>4</sup> [https://www.sem.admin.ch/sem/en/home/themen/fza\\_schweiz-eu-efta/meldeverfahren.html](https://www.sem.admin.ch/sem/en/home/themen/fza_schweiz-eu-efta/meldeverfahren.html)

### **Cross-border service provision by British nationals living in Switzerland:**

Switzerland has a whole host of bilateral agreements with the EU, including on the free movement of people. Swiss firms are covered by the CH-EU agreements on free movement and can deploy their staff to deliver services into the EU for up to 90 days a year. However, under the UK-EU TCA<sup>5</sup>, Austria, Denmark, Croatia, Latvia, Malta, Slovenia and Slovakia will require a work permit (and in some cases also an economic needs test) for British citizens providing these services on behalf of their employer, and Cyprus and Poland reserve the right to effectively prohibit the provision of translation and interpreting services by British citizens.

It is unclear as to whether a Swiss sole tradership or one-person limited company counts sufficiently as a Swiss firm deploying staff. Given that the minimum investment to set up a limited company in Switzerland is CHF 20,000 (nearly £16,900 at the time of writing), of which no more than 50% can be in kind (at least 50% must be in cash), it is questionable how many freelancers will be working under this corporate form, so this option is likely only to apply to employees of a larger organisation. Any freelancers who have incorporated in Switzerland will, in any case, likely be classed as “Contractual Service Suppliers” (see both the UK-EU TCA and the UK-CH services mobility agreement).

The UK-EU TCA brings a little clarity and presumably applies to UK citizens in Switzerland who wish to provide cross-border services into the EU. Translation and interpreting services are allowed in principle, but with a whole host of “reservations” (= restrictions). Kim Sanderson of the Cross-Border Services Working Group collated the relevant sections that apply to translators and interpreters and the author of this paper put them into plain English. The document below makes no claims of completeness or legal accuracy and use is entirely at your own risk.

<https://docs.google.com/document/d/1cCRNLevKNU6T61buTMmI0K6Fvjb3GKQ07uMZ45SNmbg/edit>

Self-employed UK citizens in Switzerland who can make a case that they were an existing frontier worker prior to 31 December 2020 (in which case they probably need to work under the aegis of an existing business or businesses established in one or more EU countries) are covered by the EU Withdrawal Agreement.

### **Recognition of professional qualifications:**

The UK-CH citizens’ rights agreement specifies that qualifications that have already been recognised before the end of transition will retain that status in Switzerland. Moreover, those who have obtained qualifications prior to the end of 2020 but not yet applied for recognition and those who have started but not yet completed qualifications (and hence not yet applied for recognition) before that date have a period of 4 years after the end of transition (i.e. until 31 December 2024) to apply for their qualifications to be recognised.

See Part Four (page 23 onwards) of the primary text of the agreement.

### **What does all this mean for translators and interpreters?**

Bear in mind that EU free movement rights have only existed in Switzerland since 2002 when the bilateral agreements with the EU came into force. Therefore, there is plenty of recent precedent to fall back on as to how UK citizens will be able to work with Switzerland in the future.

The continuation of the notification system under the UK-CH services mobility agreement is very welcome and should allow both translators and interpreters to carry out short-term assignments in Switzerland as previously (subject to the agency conditions). No registration is required for up to 8 days’ work in Switzerland.

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<sup>5</sup> [https://ec.europa.eu/info/sites/info/files/draft\\_eu-uk\\_trade\\_and\\_cooperation\\_agreement.pdf](https://ec.europa.eu/info/sites/info/files/draft_eu-uk_trade_and_cooperation_agreement.pdf) p. 743-744

There was never any problem for UK translators in the UK or EU countries to work in their country of residence for clients in Switzerland: in general, translators working in their country of residence and delivering translations to any other country under WTO terms are fundamentally unaffected since this falls under Mode 1 (cross-border trade) of the GATS definition of services trade<sup>6</sup>. If anything, it was a little easier than with clients in EU countries; as Switzerland is not in the EU, it falls outside the scope of UK or EU VAT. That means there is no VAT to charge on deliveries to clients in Switzerland, and also no EC sales list to complete (place of supply rules apply)<sup>7</sup>. In this respect, there should be no changes. Working with clients in Switzerland should function in exactly the same way as working with clients in the US, Australia, or any other non-EU country.

It is reasonable to suppose that remote interpreting should function in the same way as translation as a Mode 1 service.

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<sup>6</sup> [https://www.wto.org/english/tratop\\_e/serv\\_e/cbt\\_course\\_e/c1s3p1\\_e.htm#boxa](https://www.wto.org/english/tratop_e/serv_e/cbt_course_e/c1s3p1_e.htm#boxa)

<sup>7</sup> <https://www.gov.uk/guidance/vat-how-to-work-out-your-place-of-supply-of-services>  
<https://www.gov.uk/guidance/vat-place-of-supply-of-services-notice-741a#b2c-services-supplied-where-the-customer-belongs>