

## Helma Immigration Alert : March 2019

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Several French immigration clarifications and changes took place in the last weeks. Many of these are decrees, ordinances ... published in application of an immigration Law passed on September 10, 2018 or in the context of Brexit. Another ministerial decree, following the EU Directive on Posted Workers, will make the management of posted workers in France more restrictive as of July 30, 2020.

### [Creation of a new temporary residence permit « Recherche d'emploi ou création d'entreprise » facilitating employment of students later than the year diploma is obtained](#)

This temporary residence permit replaces the current « Autorisation Provisoire de Séjour » which allowed students (mainly holders of a Master degree) to stay in France one year after the obtention of their diploma to find an employment.

- The requirements to obtain this new residence permit « Recherche d'emploi ou création d'entreprise » are mainly the following:
  - Holding a residence permit mentioning « Etudiant/Student » or « Chercheur/Researcher »
  - Having obtained at least a Master degree in France
- The residence permit allows working in France. Its duration is 12 months, not renewable.
- The holder of this residence permit who has found an employment in France will be allowed to apply for one of the following residence permits: « Salarié », « Travailleur temporaire » or « Passeport Talent » (salaried categories). The Labour market test will be not applicable.

- The student who left France after his/her study will be able to apply for this status with a French Consulate abroad until 4 years after the obtention of his/her diploma (at least a Master degree) in France.

### Clarification of tenure and cooling period for Intra-Company Transfer – ICT

Since March 1st, the 3 months seniority required within the group to apply for the ICT status increases to 6 months.

The maximum duration of the assignment is still 3 years, not renewable. From March 1st, a cooling period of 6 months abroad is required before being allowed to apply for a new ICT long stay visa.

The decree also amended the definition of ICT (article R 313-72 of Ceseda). Indeed, until now the French law referred to a « mission » to define the purpose of the assignment in France. The amended article mentions a « transfert temporaire intra-groupe » (« temporary intra company transfer »). This new definition could suggest that an ICT assignee could be assigned successively to different intra-company missions (but not at the client site).

### DCEM and accompanying family

The field of the family who can benefit from the accompanying family process has been extended.

Until now only the children of the main applicant had the benefit of the family accompanying process. From March 1st, the children of the couple (even if he/she is not the child of the main applicant) can benefit from this status.

Once in France, the children will obtain a DCEM (only document from now on required for minors traveling as the TIR is removed). This will no longer be granted automatically for 5 years but will be aligned to the duration of the parents' residence permit.

### Simplification and faster OFII Validation (on line process)

The French Government has recently implemented a new and faster process to validate long term visas for certain categories of visas.

As of now, the validation of holders of long-term visas with 3 to 12 months validity will be processed online. With this online registration applicants will be issued an attestation to keep with their passport (replacing the “Vignette OFFI), hence avoiding physical presence.

### Passeport Talent : Issuance of an “Autorisation Provisoire de Séjour” allowing to travel during the processing time of the residence permit application.

Until now applicants received a “Récépissé de demande de titre de séjour” valid 3 or 4 months which did not allow to travel abroad until the issuance of the residence permit.

Now, holders of a long stay visa bearing the mention “Passeport Talent” will systematically receive from the Prefecture an “Autorisation Provisoire de Séjour” valid 6 months allowing them to travel abroad and re-enter France.

### Brexit : Consequences of a “No deal” on British nationals living and working in France

On February 6<sup>th</sup>, the French Government has published an ordinance regarding the rights of stay and work for British nationals anticipating a no deal between United Kingdom and European Union. This ordinance will take effect only if no agreement is signed.

The situation remains fluid as the UK Parliament has rejected the agreement negotiated by Theresa May with the Union European and the effective date of the Brexit will be postponed.

In the meantime, the rights of British nationals will remain the same until the signature of an agreement between UK and the EU or the new exit date.

In a “No deal” scenario British nationals:

- Present in France, either as workers, retired persons or students, before effective Brexit date, will retain a right to reside and work during a grace period of 3 to 12 months (determined by a future decree). They will have to apply for a residence card before the expiration of the grace period but exempted from long-term visa and work authorisation
- Arrived in France less than five years before Brexit effective date will be issued a temporary or multi-year residence card under a favourable regime subject to some work and financial conditions. This regime should enable the continuity of work for employees and his/her stay in France together with family members regardless of their own citizenship
- Residing in France for more than five years before Brexit effective date will receive (as well as their family members) a 10 years residence card automatically renewable

### Extended Posted Workers’ Rights – Transposition of EU Directive 2018/957

France is the first country that has already taken steps to transpose the third EU Directive on Posted Workers (PW). The Decree was issued on February 21, 2019 and will enter into force on July 30, 2020.

In addition to existing obligations with regards to health and safety, minimum salaries, overtime, vacation rules, declaration with the labour authorities, stricter requirements will apply to employees assigned to France when their assignment reaches 12 months (or 18 months after filing a detailed request).

- The entire French labour law conditions will apply (except those regarding termination of the assignee’s employment contract). The equal definition of remuneration relates to the same compensation as domestic employees in the same industry/sector: not only base salary, but

also any other benefits paid directly or indirectly, in cash or in kind (including bonuses or other entitlements provided by industry/sector collective bargaining agreements)

- These will apply on the top of allowances or reimbursement for travel, accommodation and per diem/COLA
- In the absence of filing the detailed request after 12 months for 6 additional months fines will apply

Special attention must be paid to assignees that will still on assignment on July 2020 as the 12 months limit will consider previous assignment periods.

It is important to note that this Decree is part of a broader set of measures to avoid “social dumping” in France and additional measures may come. Work inspections will also increase.

Finally, the removal of the declaration of assignments to the labour authorities (SIPSI) for very short-term assignments is still waiting.



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