



KINGSLEY NAPLEY

WHEN IT MATTERS MOST

IMMIGRATION

Fly In Fly Out - Netherlands

Transcript

Hello and welcome. My name is Ilda and I'm a partner in the Immigration Department at Kingsley Napley. With effect from the 1st of January 2021, British citizens travelling into Europe are now deemed as third country nationals, meaning that UK law firms who regularly send British national lawyers to provide advice to their clients in Europe will firstly need to check whether work permission is required in advance of their travels.

This is because every country in Europe has their own immigration rules.

Equally, they should be checking whether there is any requirement to register with the local law society.

To that end, I'm delighted to say that I have a colleague, Kirsty from Everhart, a Dutch immigration lawyer, with me alongside my colleague Jessica Clay, a partner in our Regulatory department who will be providing and answering a couple of points in relation to travel into the Netherlands on a fly in fly out basis and Jessica, covering the pieces in relation to what you should be thinking on from a regulatory standpoint.

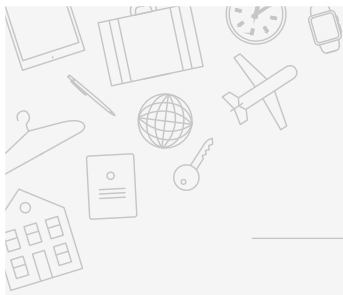
So firstly, I'm going to turn to Kirsty. Kirsty, thank you very much for agreeing to take part in this session.

The first question I have for you is, do you have any top tips for law firms that need to send UK lawyers into the Netherlands for short term trips?

Hi Ilda, thank you for having me. Well, I guess that the most important tip is that UK law firms should make sure that their employees are aware of the fact that they are no longer EU citizens. It seems obvious, but you might be surprised by the number of clients who are still surprised by the fact that they cannot simply travel back and forth to the Netherlands and perform any kind of activities they wish to do.

So there's still a number of companies that don't have protocol in place for international travel for their employees after Brexit.

As a general rule, third country nationals like UK citizens need work permits for any work they carry out on, but only activities that are covered by a specific work permit waiver.



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A work permit is not required. When you look at the work permit waiver applicable to UK travellers, there are basically two legal basis for it. On the one hand, we have waivers based on Dutch national law and on the other hand we have waivers which are based on the EU trade and cooperation agreements so TCA.

In Dutch national level, the waiver applies to business meetings, but in the TCA it applies to meetings and consultations. So for both waivers, there is no specific information in the legislation. And it also doesn't look like it's explained any further at least for the Netherlands.

Discussions with advisers, advisers at the Labor Inspectorate do seem to indicate that their initial position would be that the World Council consultations imply something slightly broader than just business meetings.

It is, however, not expected to take an official position on this, which means that it's ultimately up to business Traveller and his or her employer to assess risk of travelling under a waiver.

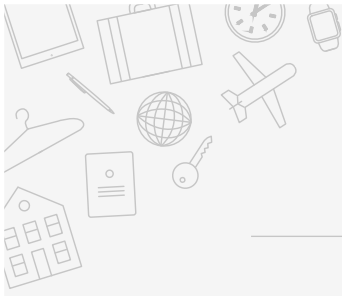
It might be important to add that a permanent waiver is not something that you can apply for in the Netherlands.

You simply travel without applying for work permits when you believe that you will fall under a waiver and it's up to you to enforce it or do this in case the authorities do believe that work is performed under a waiver which should have been covered by work permits, the authorities could decide to issue a fine.

Thank you.

It sounds quite technical...

Yeah, it is. And unfortunately, the fact that it really determines the in law means that you have a little bit more flexibility when it comes to determine whether something is actually like a consultation, so to say.



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But it also means that the fact that the risk is with the traveller or with his or her employer makes it a little bit hard also for us to make sure to specify that the company is coming from that perspective.

Thank you.

The second question I have for you is assuming that this British national lawyer will only be in the Netherlands to visit a client and not to provide any form of advice.

What is the minimum amount of time that they can spend in your country as a visitor?

Well, visitors to the Netherlands' are required to comply with the general Schengen rules for visitors, which means that they can spend a maximum of 90 days in a timeframe of 180 days and in the Schengen area.

As you may know, they have 180 days period is a rule in periods which means that for each new entry, the traveller needs to look back 180 days to see if they still have sufficient days left.

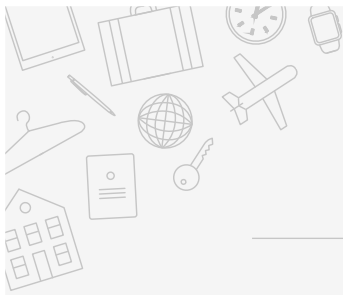
This applies to all the Schengen countries together. So unfortunately, travellers don't have ninety days in each Schengen country.

And this is a problem I know from experienced as clients struggling with that.

Thank you.

The other question I have for you, Kirsty, is, is the visit to Visa then issued at port or how does that work in practice if you're a British national travelling on a British passport into the Netherlands?

UK Nationals can travel to the Netherlands by simply using a passport. They will not require a visitor visa on arrival. Border Patrol will check if the traveller can be granted access off the basis of the Schengen rules, but they will not be issued a visa at this point.



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Thank you. Another question for you.

Will the position be different if they were intending to see a client in order to provide chargeable advice and it could include things like preparing legal documents, even if it's only for a few days?

Well, the position would not be any difference. The duration of the stay is not relevant to determine if a trip falls on the waiver or not. It's really the nature of the activities that matter in the Netherlands. And activities can fall under a business visitor weight waiver, whether it's chargeable or not.

Thank you.

What happens if the lawyer regularly needs to travel into the Netherlands in order to see the client to complete a project? So. Is that a problem? I know you alluded to the 90 day out of 180 days in the ruling period.

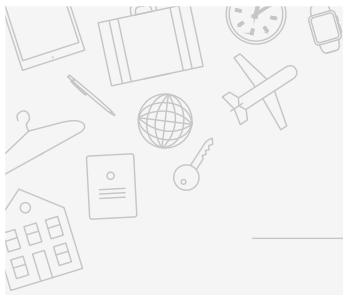
Yeah, definitely. So if we're talking about a single lawyer, then the 90 day out of the 180 days is something to keep in mind. If we would, for example, talk about a project that would include multiple lawyers working on the same matter.

For example, a large M&A project, it could be possible to apply for a project recognition with the Labor Inspectorate on the International Trade Regulations is. This program is designed to provides a practical and flexible arrangement for maintaining international trade contracts.

Once a project is admitted by the authorities, the UK lawyer could travel without obtaining a work permit in advance, but by simply notifying the authorities two days ahead of travel.

One thing to keep in mind though, is that it still this would still be on a business basis, so you would still need to visit a base to make sure that you would not be overstaying.

As overstaying could lead to an entry ban for not only for the Netherlands, but for the whole Schengen area.



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Only if someone intends to stay in the Netherlands for more than 90 days, someone would qualify for a X.

Thank you. Kirsty.

If a work permit is required, how quickly can it be done? And is it something that must be done and applied for in advance of travel?

Well, in the Netherlands the issuance of work permits is assigned to the Labor Inspectorate. Applications are processed in five weeks on average.

The processing has become a little bit more complicated as the processing is done digitally and filing applications on behalf of clients requires the client to propose digital authorisation produce.

If a work permit is required, to work permit needs to be in place ahead of the start of activities. It's not possible to travel ahead of time while the application is still pending.

Thank you.

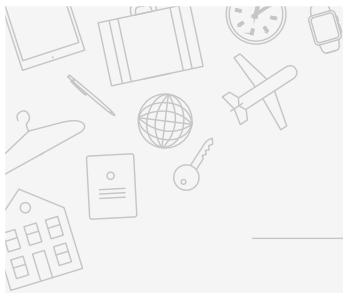
And my very last question. Kirsty.

If all else fails, are there any top tips that you would give?

Well, I think the whole covid area did told us that nowadays people are well equipped to work with colleagues or clients from different locations around the world.

Most companies have invested a lot to make sure that their employees have the tools to do so. So ultimately a team meeting is still an option. But we would, of course be happy to assist clients assessing if traveling to the Netherlands is still possible while making sure that all parties involved are being compliant.

So thank you, Kirsty.



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I now turn my attention to Jessica Clay, who's a partner in our Regulatory department.

Jessica, thank you for your time.

What is the regulatory position now for UK solicitors wishing to fly in and fly out of the Netherlands?

Thanks Ida. Well, foreign lawyers advising in the Netherlands have comparatively broad practicing rights compared to other EU jurisdictions and what this means in practice for England and Wales Qualified lawyers is that they will be permitted to advise on the law of England and Wales and on EU law on a fly in fly out basis in the Netherlands.

As long as they do two things they will need to mention their home jurisdiction professional organisation so the organisation under which they are authorised so for us, that would be the Solicitors Regulation Authority and also make sure that they use their home title when providing advice. So that would be the title of Solicitor of England and Wales.

Thank you.

And can you explain, are there any conditions or restrictions attached to the scope of practice?

Yeah, there are. So as I've already said, you must hold yourself out under your home professional titles and make very clear that you are a solicitor of England and Wales.

You must not appear in court and also in England and Wales Qualified lawyers must restrict the advice and services that they're providing to formal client meetings and also work in the margins of those meetings, such as some email correspondence and calls for example.

Thank you.

And the last question I have for you, will LPP apply.



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So in respect of foreign lawyers, so England and Wales qualified lawyers would be a good example of that. EU LPP does not apply, but also LLP only applies to Dutch lawyers.

So in terms of a work round, if you were attending a meeting, for example, it might be worth working with a local lawyers or local Dutch lawyer and have that individual running the meeting so that LTP would apply in that situation.

Thank you both so much for your time. We've now come to the end of this session. I wanted to thank you, Kirsty, for your time as well as Jessica, and thank you to everyone that has listened to our recording.

We hope that you found this very helpful. f you do have any questions, you are more than welcome to contact myself, Kirsty and or Jessica. Our details will appear at the bottom of this recording.

Thank you again.

