

UK Defence in Germany *'force'* Instruction/Information Note No: 05/2022

REFERENCE:	GSO-GEO/02 Command or Direct or Manage the Unit
TITLE:	Germany – The control of Aliens and Immigration - The German Residence Act ("Aufenthaltsgesetz - AufenthG") and Employment
AUDIENCE:	All UK NSE, and other UK supporting elements in Germany.
	All members of the <i>'force'</i> , the <i>'civilian component'</i> , and their entitled <i>'dependant'</i> s; AFF, RAF FF, EASP
REFERENCE(S)/SUPPORTING INFORMATION:	 A. <u>NATO Basic Documents: SOFA, London, 19 June 1951</u> (sharepoint.com) <u>B. NATO SOFA Supplementary Agreement (sharepoint.com)</u> C. <u>SPOUSAL EMPLOYMENT: NATO SOFA - GOV.UK</u> (www.gov.uk) D. The German Residence Act ("Aufenthaltsgesetz - AufenthG") https://www.gesetze-im-internet.de/aufenthg_2004/index.html -; a courtesy translation for information only is provided at <u>https://www.gesetze-im-internet.de/englisch_aufenthg/index.html</u> E. Federal Ministry of the Interior - General Administrative Regulation on the Residence Act of 26 October 2009 - <u>20221002-BMI-MI3-20091026-SF-A001.pdf9.pdf (German only)</u>
SUPERSEDES:	
AUTHORITY	UK Head of Mission – Germany
EFFECTIVE:	04 October 2022
EXPIRES:	Until replaced
CONTACT (via NSE):	Command Group
	Global Support Organisation (Germany) Building 213 — Antwerp Barracks SENNELAGER - BFPO 16

This Information Note is a product of some detailed investigation and cooperation with our allies, our hosts in Germany and other sources. It is an interpretation of Reference E in the Control of Aliens and Immigration, and its relationships with References A and B.

Be advised that Reference E is not a provision of

- the NATO SOFA, or
- the Supplementary Agreement in Germany, or
- UK MOD Policy, or
- UK Domestic Law

Other than a person must be registered with this Office and in possession of a SOFA Certificate and SOFA Card to do so. The Germany Enabling Office bears no responsibility for the administration of or support to persons undertaking any opportunity under Reference E.

THE GERMAN RESIDENCE ACT: EMPLOYMENT ON GERMAN ECONOMY FOR SOFA STATUS HOLDERS

SOFA Status and Supporting Documentation

According to the NATO SOFA *Art III paragraph 3* members of the *'civilian component'* and *'dependants'* are to be described as such in their passports. Documentation is issued in the form of the <u>SOFA Support ID Card</u>¹ and the SOFA Certificate to all members of the civilian component and dependents by the Germany Enabling Office.

The German Residence Act ("Aufenthaltsgesetz - AufenthG")

The German Residence Act formally acknowledges those registered with the representative authority of the *'sending state'* [UK in this case] with SOFA Status as an accepted form of residence in German law. For any person bearing the SOFA certificate in their passport, the German Residence Act ("Aufenthaltsgesetz - AufenthG") does not apply.

This acknowledgment of being resident in Germany further provides exemption from the requirement for obtaining a work permit in accordance with Section 1 para 2 sentence, Sections 4 and 7 AufenthG and Section 1 para. (2) sentence (3), Section 4 AufenthG. Consequently, it is possible to seek employment on the German employment market immediately on registration and receipt of the SOFA documentation.

Persons are advised not to register residence at the local Town Hall. All persons with NATO SOFA status in Germany are exempt from that requirement under Art 6 Supplementary Agreement. Registration will cause legal issues, e.g., trigger a German tax identification number, radio/TV tax demands (ADZBS(previously known as GEZ)), inquires by the German alien authorities.

Undertaking employment in the German labour market

The rationale for being exempt from the work permit requirement is initially Art 6 of the Supplementary Agreement to NATO SOFA. That provision exempts members of the *'force'*, the *'civilian component'*, and dependents from the German laws in the field of alien control. Since the requirement for a work permit is tied to the immigration law requiring a residence title, it also does not apply to individuals with SOFA status.

According to paras 1.1.3 and 4.2 of Reference E the Residence Act is not applicable to individuals with SOFA status. Moreover, the work permit requirement results from Section 4 Residence Act resulting in there being no separate "work authorisation" apart from a residence title. Thus, due to the lack of applicability of the Residence Act, Residence Ordinance and Employment Ordinance, there is no statute or ordinance applicable to NATO status personnel requiring a work permit and thus, they may work.

It is, however, very important to understand that in any such jobs you will have no SOFA status for that work.

For example, if you are a dependent, then you only have SOFA status as a dependent (stay-home family member) and will be subject to German taxes and any other German requirements relating to employment on the German market. When undertaking such employment, it is as a resident in Germany, no SOFA entitled attribute is relevant i.e., military, civil component, 'dependant'.

For those seeking to undertake secondary employment on the German employment market be advised that it is only the primary salary received in role as an entitled member employed in support of the *sending state* that is protected from German income tax. Though protected from

¹ North Atlantic Treaty Organisation Status of Forces Agreement: identification of status - GOV.UK (www.gov.uk)

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German income tax it could be considered as a part of your cumulative income in assessing any German tax liability.

Remote working for companies or organisations of a nation other than Germany

Reference D formalises residence in Germany.

As a formally recognised resident in Germany under Reference D persons seeking to operate remotely for a company or organisation of another nation, Public or Private, are subject to compliance with German laws on such undertakings. Advice should be sought from legal professionals.

Further support and advice

To undertake opportunities provided through recognition in the German Residence law is a matter of personal choice.

This Information Note is passed to appropriate supporting bodies for their consideration.

GEO POLICY CENTRE

These, published instructions, once released, are routinely available through the <u>GSO(G)</u> <u>Policy Centre</u> as is the case with all other Whole *'force'* Policy.

Where applicable these instructions should be read alongside more detailed extant policy delivered through *'force'* Standing Orders/*'force'* Standing Instructions. Where any change in policy is introduced, these instructions are to be regarded as having primacy. *'force'* Standing Orders and/or *'force'* Standing Instructions will be reviewed and republished in due course at which point the Information Note/Directive will be withdrawn.

OPEN-SOURCE INFORMATION

The Germany Enabling Office wherever possible seeks to provide information on the matters that is suitable for the public domain through its World Wide Web supporting capability:

- UK Defence in Germany and Europe: Information notes GOV.UK (www.gov.uk)
- > Further Information and Guidance is available on <u>GSO(G)Web</u>:

Original Signed

UK Head of Mission Sending States Germany

