

How will Brexit affect businesses from an immigration perspective?

Now that the Brexit negotiations are in full swing, we have set out below our updated advice on some of the most common questions we see surrounding the potential impact of Brexit on employment and business immigration.

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These FAQs will be updated as the negotiations progress and further publications are made by the Government.

The business

How will Brexit affect the business from an immigration/migration perspective?

Free movement will come to an end when the UK exits the EU.

EEA nationals will need to apply under one of the following routes (see below for further details) if they want to continue to work and live in the UK thereafter:

1. The EU Settlement Scheme

This requires EEA nationals to apply for settled/pre-settled status at the “relevant date” to enable them to continue living and working in the UK indefinitely. The “relevant date” will depend on whether there is a deal or not (see below for further details).

2. EU Temporary Leave to Remain

In the event of no deal, those EEA nationals coming here after 29 March 2019 and wishing to work for more than 3 months will need to apply under this route to be able to stay and work here temporarily. This route will be available until the new immigration system is in place in early 2021.

3. The new immigration system

On 19 December 2018, the Government confirmed that a new system will apply to both EEA nationals and non-EEA nationals, irrespective of nationality. Essentially, it will migrant workers to obtain a visa and require employers who wish to recruit skilled workers, to obtain a Licence to Sponsor. The new system is expected to be implemented on 1 January 2021, following a period of consultation and changes to legislation over the course of the next year or so. It is possible that some visa routes will be open before then.

This will inevitably result in significant curbs on the ability to recruit EU nationals who enter the UK after we exit the EU. Those businesses with low-paid and low skilled workers, relying heavily on EEA workers, are likely to be affected the most (e.g. the construction industry and low-paid work in social care, retail, horticulture and hospitality).

Will EU nationals need a visa to work in the UK?

It depends on when they come to the UK and whether a deal is done.

If a deal is done, the Government has confirmed that all EU citizens present in the UK by 31 December 2020, will not require a work visa. Instead, they will be required to apply under the EU settlement Scheme for 'settled status' (the equivalent to Indefinite Leave to Remain) or 'pre-settled status', provided that they meet the eligibility requirements. They will have until 30 June 2021 to make their application.

If we leave the EU without a deal, all EU citizens will need to be present in the UK by 29 March 2019 in order to be eligible to apply under the EU settlement Scheme. They will then only have until 31 December 2020 to make their application. For those arriving after 29 March 2019 wishing to work in the UK for more than 3 months, they will be required to apply for EU Temporary Leave to Remain until the new immigration system is introduced. Essentially, the new immigration system will mean that all skilled migrant workers, irrespective of nationality, will need a UK sponsor and a visa to enter the UK.

Is there anything EU employees can do now to protect their position?

Other than keeping up to date with developments, there is nothing that EU employees must do at present.

The Government has confirmed that there is no need for EU citizens currently living and working in the UK to prove that they are exercising their EU rights or that they have a current right of permanent residency in order to remain in the UK after Brexit.

Furthermore, the Government has advised that EU nationals should not apply for permanent residency before the UK leaves the EU, as the Government has confirmed that such documentation will not be valid after Brexit in any event.

EU citizens with permanent residence cards will still need to apply for settled status under the Scheme when it comes into force. However, the process of applying for settled status will be more streamlined for those EU citizens who already hold permanent residence cards, so they will be at an advantage when the time comes to apply for settled status. The current proposals envisage a simple process to swap their current status for settled status, free of charge.

The Government has confirmed that EU employees will be given until 31 December 2020 (if there is no deal) or 30 June 2021 (if a deal can be done) to obtain this new status (during which their position in the UK will be protected). Having said that, they would be well advised to apply when the online application is fully available, as there will undoubtedly be delays given there will be an estimated three million applicants.

The EU Settlement Scheme is currently being piloted. For those with a valid passport or national identity card, an online application can be made under this Scheme now. The Scheme will be open to the general public from 30 March 2019.

Those who are eligible, can still apply for British citizenship. Becoming a British citizen means that these individuals will not have to apply for settled status when the UK leaves the EU.

How can we recruit from within Europe when we don't know what is happening?

It is still business as usual at the moment. It is unlawful to discriminate against job applicants because of nationality, and on current guidelines right to work checks should only be carried out at the final stages of recruitment. Currently, EU workers still have the right to work in the UK and they should not be refused employment because they are from outside the UK.

How can we attract candidates?

- Review your policies to make it clear that discrimination against EU migrants will not be tolerated and ensure that this is visibly supported by management.
- Demonstrate that you are prepared for what is to come by carrying out an audit of your current employees to assess what proportion of your staff might be affected by Brexit and to identify individuals for further communication.
- Actively discuss with your current EU employees their immigration situation and assist them with finding solutions.
- Assist current EU employees who wish to apply for settled status/pre-settled status/permanent residence (notwithstanding the fact that this will not have effect after Brexit but could make applying for settled status more streamlined)/British citizenship (if eligible) by

providing all relevant advice and documents that you have that may support their application. You can find a toolkit which has been prepared by the Government [here](#).

- Consider applying for a Sponsor Licence if you don't already have one. The proposed new immigration system will require all employers wishing to recruit skilled migrant workers after 31 December 2020, to obtain a Sponsor Licence in order to do so. Current timeframes for such applications are between 8-12 weeks. The timeframes are likely to increase as more and more businesses apply.
- If you already have a Licence to Sponsor, consider whether you need to extend this to cover any branches/offices/subsidiaries that are likely to need to recruit EEA workers after 31 December 2020.

Existing employees

Will EEA nationals get to stay if they are already working here?

Yes, qualifying EEA nationals will. The Government has confirmed that, provided a deal is done:

- EU nationals who arrive in the UK by 31 December 2020 and who have been residing here continuously for five years as at that date, will have the right to apply for settled status. Where settled status is granted, these EU nationals will be free to work / study here permanently. Those with settled status and six years' continuous residency will then be eligible to apply for British citizenship.
- EU nationals who arrive in the UK by 31 December 2020 but have not been living here continuously for five years as at that date, will have the right to apply for pre-settled status in order to remain in the UK until they can accrue the required continuous residency to enable them to apply for settled status.

In the event of no deal, EU nationals will need to arrive in the UK by no later than 29 March 2019 and will have until 31 December 2020 to make an application for settled/pre-settled status. Those resident in the UK after 29 March 2019, will need to apply for EU Temporary Leave to Remain and then a visa under the new immigration system which will be in place from 1 January 2021.

Continuous residency generally requires that the applicant has not been absent from the UK for more than six months in total in any 12-month period. There is to be no restriction on the number of absences permitted, provided that the total period of absence does not exceed six months in any 12-month period.

There will be 3 core criteria that applicants will need to meet in order to apply under the Settlement Scheme:

1. **Proving identity** - through a passport, identity card, BRP etc;
2. **Proving residency in the UK for the required period** – it is proposed that this is done using data held by HM Revenue & Customs and the Department for Work and Pensions. For those who have not been working they will be able to produce other documents such as bank statements showing spending in the UK on the relevant date or used flight tickets;
3. **Criminality** – criminal record checks will be undertaken for any serious or persistent criminals, or anyone who poses a security threat.

The Government has developed a new streamlined online application for those EU citizens that wish to apply for settled status/pre-settled status. This is currently being piloted. The costs of the application (being £65 (and £32.50 for children under the age of 16) have now been scrapped. For those that have paid this fee under the pilot, they will be reimbursed. Furthermore, those applying will not have to account for every trip in and out of the UK and will not have to demonstrate that they have held comprehensive sickness insurance to be considered continuously resident.

We are assured that applications will not be rejected on the basis of minor technicalities and that it is expected that the majority of applications will simply be granted. There will also be a right to an administrative/judicial if the application is unsuccessful.

Is Brexit likely to affect current UK legislation and, if so, how?

Large parts of UK employment and immigration law derive from EU law. The employment rights within the UK that are purely domestic rights will not be affected by Brexit (for example, the right not to be unfairly dismissed).

In respect of EU law, the Government has introduced the Great Repeal Bill which will automatically convert all EU law to UK law when the UK leaves the EU. This means that there will be no immediate change in the law when Brexit happens, and any laws which the Government wishes to change will need to be repealed/introduced individually.

Therefore, for the time being at least, it is business as usual from an employment perspective. It is anticipated that workers' rights will be protected and that, in the short term at least, there will be no major changes. Many of the rights set out in EU law are rights that the Government (and most employers and employees) would wish to retain, such as discrimination laws, maternity leave or collective consultation in the context of redundancies. Those rights are now well-established in UK law and any moves to repeal those would be highly controversial. However, only time will tell if there will be any longer term changes.

As regards immigration law, the new immigration system discussed above will be reflected in revised Immigration Rules via a new immigration bill, which is currently going through Parliament. We will continue to update you as and when developments arise in relation to this.

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