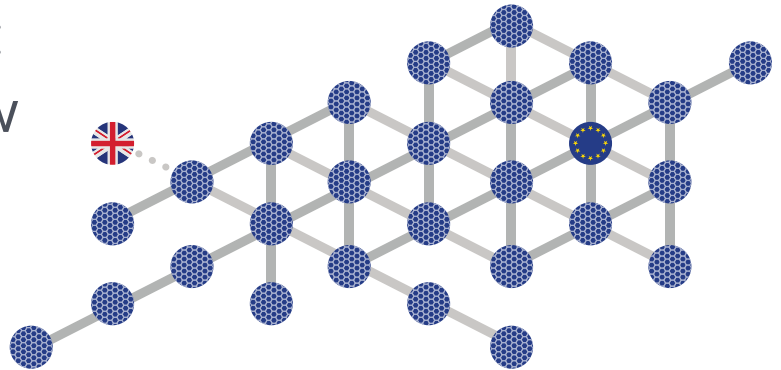




Brexit and immigration: what you need to know

Brexit Briefing Note



Brexit will have significant implications for many EU nationals working in the UK and for employers who rely on EU workers. With the European Union (Withdrawal Agreement) Bill 2019-20 now having passed its second reading in the House of Commons, we are due to leave the EU on 31 January 2020 and will enter a transition period ending on 31 December 2020 (unless there is an extension agreed).

Below, we explore the five key immigration-related workforce issues for employers arising from Prime Minister Boris Johnson's revised Withdrawal Agreement and the five key steps they should consider to prepare for the potential recruitment challenges that lie ahead.

1. **BREXIT WILL LEAD TO THE BIGGEST CHANGE IN IMMIGRATION LAW SINCE IMMIGRATION CONTROL BEGAN IN THE 1960S.**

Brexit will lead to profound changes in the UK's immigration landscape. For many businesses, this will be an issue with which they have to grapple for the first time.

The vast majority of UK businesses have not previously had to consider the UK's complex immigration system because the free movement of people within the EU has filled in a shrinking resident labour market. Indeed, very few small and medium-sized enterprises (SMEs) in Scotland currently hold a Sponsor Licence – a Sponsor Licence being the means by which employers can employ skilled non EU staff. The reason that Sponsor Licences are rare amongst SMEs is that businesses have not had the need to obtain one – they have instead met all of their recruitment needs through free movement.

Due to Brexit, immigration is now an issue that should feature on virtually all business's HR agenda in order to recruit and retain international talent. The sole businesses immune to this issue are those that only employ British citizens.

2. **WHEN WILL THIS CHANGE TAKE PLACE?**

Under the terms of the Prime Minister's deal, there will be a transition period lasting until 31 December 2020, during which free movement will continue. EU nationals who are currently in the UK and those who arrive up until the 31 December 2020 will be allowed to stay and live with their families permanently in the UK, providing they register under the EU Settlement Scheme by 30 June 2021. Employers can, therefore, rely on free movement to recruit EU nationals up until 31 December 2020. From 1 January 2021, free movement will end and employers will face a new immigration system.

3. **WHAT WILL THE NEW IMMIGRATION SYSTEM LOOK LIKE?**

In the Queen's Speech, plans were announced to introduce a "points-based immigration system". It has been reported in the press that the "Australian-style" scheme would have three different levels. The top tier would, it has been suggested, provide fast-track entry for migrants who are deemed highly skilled or "exceptional". According to press reports, the latter would be individuals such as sponsored entrepreneurs or those who have received "world-leading awards". The second category would cover "skilled workers" already in receipt of a job offer and a specified tally of points, and the third would apply to low-skilled workers, granting them the right to



stay in the UK as long as they are working for industries experiencing a labour shortage. A points-based system is not new, however. The UK has, since 2008 run a points-based arrangement for non-EU migrants.

4. **WILL THE NEW IMMIGRATION SYSTEM TAKE ACCOUNT OF SCOTLAND'S UNIQUE IMMIGRATION REQUIREMENTS?**

Scotland has a unique demographic profile and its own set of immigration needs. The need for a tailored immigration solution to address Scotland's particular challenges is being championed not only by the Scottish Government but also by business groups such as the Confederation of British Industry (CBI). Dame Carolyn Fairbairn, Director-General of the CBI, has warned that, in 20 years, her organisation anticipates that only one third of the Scottish population will be of working age, which she has said would have "profound implications for Scotland, its tax base and public service".

While previous Conservative administrations have opposed a tailored immigration solution for Scotland, there are signs that the new government might be more flexible. Quite how this will play out remains to be seen. It might be the case that skilled workers being sponsored by a Scottish company will face a lower salary threshold under the Sponsorship system, (currently this is set at £30,000 for all workers coming to the UK from overseas). It might also mean that the UK Government will engage with the Scottish Government's call for devolved competence in this area by granting a degree of autonomy. The situation continues to develop.

5. **WHAT WILL THE END OF FREE MOVEMENT MEAN FOR BUSINESS?**

For any business, whatever its size or the sector in which it operates, a key question is what the new immigration regime will mean in terms of additional cost and bureaucracy.

We await clarity on the cost of any future immigration system, but it appears likely that EU migrants will have to pay the same as non-EU migrants post-Brexit. Currently, non-EU nationals pay £400 per year to use the National

Health Service. This cost, known as the NHS Health Surcharge (IHS), is paid by the migrant worker and any family members who are accompanying them to the UK. Costs can be very significant: take for example a family of four coming to the UK on a five-year work visa, for whom the total IHS for the family would be £8,000. This is only part of the story as total visa fees of £4,880 would apply in addition to this £8,000 health surcharge.

Leaving aside the NHS surcharge, the position on visa fees under any new immigration system is unknown. Given the recruitment gaps that the end of free movement is likely to mean, the business community will be advocating for lower visa fees than under the current system.

In addition to these direct costs, employers should also factor in the indirect costs of the additional time involved in making visa applications under the new system.

STEPS EMPLOYERS CAN TAKE NOW TO MITIGATE AGAINST THE RISKS OF THESE CHANGES

1. **REASSURE AND PROVIDE POSITIVE COMMUNICATION TO EU STAFF.**

Employers need to remember that EU nationals and their families face the human cost of Brexit. EU nationals who are living in the UK need to be reassured that they will be able to continue to live and work in the UK, subject to meeting the requirements to register in terms of the EU Settlement Scheme. Employers who have not already done so should consider using the UK Government's Employer Toolkit, which includes information and documents to assist EU citizens and their families in applying to the EU Settlement Scheme.

Employers may also want to consider instructing specialist immigration lawyers to deliver one-to-one advice sessions for their EU staff. These sessions allow EU staff to raise questions that concern them, such as the rights of their children to obtain a British passport, and receive expert advice. Many businesses and organisations, including



Scottish universities, have provided this service to staff as part of their Brexit response.

2. **ENSURE IMMIGRATION IS ON THE HR PLANNING AGENDA.**

Businesses should invest time and resource to ensure they are on top of post-Brexit immigration issues in order to retain their competitive edge. Although free movement will continue until 31 December 2020, EU migration has declined since the referendum and is likely to continue to do so. Employers who listen and support their international staff (including EU staff) during this difficult time are likely to reap the benefits.

3. **AUDIT RELIANCE ON EU WORKFORCE AND MONITOR EU STAFF OBTAINING EU SETTLED STATUS**

The extent to which businesses are affected by Brexit will depend largely on the extent to which they rely on EU workers to meet their labour needs. For those operating in sectors that employ a large EU workforce, for example the hospitality and rural sectors, their operations will depend on their ability to respond to the end of free movement. Businesses should also ensure they have systems in place to monitor when their EU staff obtain Settled Status. Any EU nationals who do not register by the 30 June 2021 deadline for Settlement Scheme applications will be in the UK illegally, which means that their continuing employment after this date will be unlawful.

4. **SECTORS RELIANT ON AN EU WORKFORCE SHOULD ADOPT RECRUITMENT STRATEGIES TO CAPITALISE ON THE FINAL PERIOD OF FREE MOVEMENT**

Any EU national who comes to the UK prior to 31 December 2020 is guaranteed the right to live and work in the UK permanently. For sectors facing issues with recruitment now, it may be worthwhile considering collaborating with recruitment agencies in EU countries to attract talent during this window of opportunity.

5. **APPLY FOR FUNDING UNDER THE BREXIT SUPPORT GRANT PROVIDED BY THE SCOTTISH GOVERNMENT**

The Scottish Government has established a £2 million fund, offering Brexit Support Grants of between £2,000 and £4,000 to small and medium-sized enterprises (SMEs) to help them prepare for Brexit. Grants are provided to finance activities that will strengthen a business's Brexit preparedness, such as procuring advice on legal and contractual matters, exploring supply chain issues and opportunities, reviewing and optimising business logistics, and tackling human resource concerns.



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