

# Post-Brexit immigration from the EU: Home Office accelerates no deal planning

January 30, 2019

With negotiations continuing and still no firm timeline for when the UK will leave the EU, the Home Office is accelerating plans for a no deal Brexit. On 28 January, the Home Secretary announced that in the event of a no deal, free movement will end on 29 March 2019, with new arrivals from the EU after this date being eligible to apply for a three-year work visa termed "European Temporary Leave to Remain". This announcement follows the release in December 2018 of a policy paper on the treatment of EU nationals already resident in the UK in the event of a no deal, and the white paper on immigration reform expected in 2021 (both of which are summarised below).

## No deal planning

The Withdrawal Agreement that has been negotiated with the EU includes a transition period until 31 December 2020, during which time free movement would continue. In the event of a no deal, there will be no transition period (because there is no Withdrawal Agreement) and therefore free movement would end at 11pm on 29 March 2019. With the new immigration system only likely to be ready for 1 January 2021, this raises the pressing issue of how to recruit talent from the EU in the meantime. The policy paper released yesterday deals with this specific issue.

### 1. EU nationals arriving in the UK post Brexit

In the event of a no deal Brexit, temporary measures will be in place until such time as the new immigration system launches in 2021. During this period, EU nationals will travel to the UK as they do now – including using e-gates at major airports and having the option to use both a valid EU passport or national identity card. They will be able to live, work and study in the UK. However, if they intend to stay for longer than three months, they will need to apply for European Temporary Leave to Remain.

European Temporary Leave to Remain will be a one-time, 36-month visa that entitles the holder to live, work and study in the UK. It will not lead to settled status (permanent residence) and cannot be extended. At the conclusion of the three-year period, the holder will need to switch to a different immigration category, in line with prevailing requirements at that time, or leave the UK.

The application for European Temporary Leave to Remain will be online, subject to identity, criminality and security checks, and an undisclosed application fee.

An EU national with European Temporary Leave to Remain will be able to bring non-EU national family members with them to the UK. The non-EU national family member will need to apply for a Family Permit prior to travelling to the UK.

The degree to which the European Temporary Leave to Remain is an attractive option for UK employers and EU talent will depend on the level of the application fee and how streamlined the application process will be. The application fee for similar, fixed-term temporary visas (for example, the Tier 5 Youth Mobility) is currently £244 (in

addition to the immigration health surcharge of £300 per year of visa validity). If the application process requires physical attendance, as is the case with application processes for non-EU nationals, this could also be a significant deterrent.

## 2. EU nationals resident in the UK prior to Brexit

EU nationals who are resident in the UK prior to Brexit will be able to stay, regardless of whether a deal is agreed or not. All EU nationals, together with any non-EU national family members they sponsor, will need to apply for new residence documentation (pre-settled status or settled status) via the EU Settlement Scheme. The deadline to apply in a no deal scenario will be 31 December 2020.

While there are many similarities between a no deal Brexit and deal Brexit for existing EU national residents, there are some key differences:

- the deadline to apply in the event of a no deal Brexit is 31 December 2020, rather than 30 June 2021 if a deal is agreed;
- in a no deal scenario, EU nationals will only be able to bring close family members to the UK under the more favourable EU provisions for a three-year period ending on 29 March 2022. In addition, the relationship with the family member must have existed on 29 March 2019. In a deal scenario there is an enduring ability to bring close family members to the UK, providing the relationship existed on 31 December 2020 (the end of the planned transition period).

## Immigration compliance and right to work checks

The Home Office does not expect employers to differentiate between EU nationals who arrived in the UK before Brexit and those who arrived after. Until 2021, employers will complete right to work checks as they do now, based solely on an EU national's passport or national ID card. From 2021, employers will need to ensure that new EU national employees have the relevant right to work (either pre-settled/settled status or European Temporary Leave to Remain), but they will not need to re-check existing EU national employees.

While this is good news, it does create a risk of employing an EU national who does not have the right to work, whose employment then needs to be terminated. No civil penalty for employing an illegal worker will be levied. However, losing a key employee, who you have invested heavily in and will find difficult to replace, could still be a substantial cost to the business.

# Immigration 2021: skills-based immigration system

On 19 December 2018, the government released its long-awaited white paper on proposals for a future immigration system to launch in 2021. With free movement from the EU ending, the future immigration system will apply to both EU and non-EU nationals.

Many of the proposals in the white paper follow recommendations made by the Migration Advisory Committee in its September 2018 report on EEA migration (our summary is available [here](#)).

## 1. Skilled workers

The white paper sets out the proposals for creating a new skilled worker route, which appears to be intended to

replace the current Tier 2 General route. The key features of the new skilled worker route include:

- No cap on the number of visas available each year
- No resident labour market test
- A reduced skill threshold of RQF Level 3 (equivalent to A-levels and advanced apprenticeships), as opposed to the current level of RQF Level 6 (graduate level)
- A salary threshold to be determined after a period of consultation, with the paper stating:

"before confirming the level of a future salary threshold we will want to engage extensively with businesses and employers, consider wider evidence of the impact on the economy, and take into account current pay levels in the UK economy".

The MAC previously recommended a salary threshold of £30,000 (with a lower level for entry level skilled roles)

- This route will lead to Indefinite Leave to Remain (ILR/permanent residence), as Tier 2 General does now.

In addition to the new skilled worker route, a route for **intra-company transfers** will be available, with requirements reflecting the current requirements under Tier 2 Intra-Company Transfer.

Employers will continue to provide sponsorship to skilled workers and intra-company transfers, and have a number of compliance responsibilities. However, under the new system a number of reforms are proposed to make this more efficient and effective.

## 2. Temporary short-term workers

A new route for temporary short-term workers will be available for a transitional period (potentially ending in 2025). This route will only be available to certain nationalities (yet to be defined), with visas issued for a maximum of 12 months, followed by a 12-month cooling-off period. This route will not be sponsored and can therefore be used flexibly (for example, seasonal workers in hospitality and agribusiness, and self-employed consultants working on client projects in the UK).

## Irish nationals and EFTA nationals

Irish nationals will continue to be able to settle in the UK without needing to apply for immigration documentation. Under the Ireland Act, Irish nationals are considered settled in the UK (and therefore treated much the same as British nationals) as soon as they arrive in the UK.

Nationals of countries that are signatories to the European Free Trade Agreement (EFTA) will be treated in the same way as EU nationals. Any arrangements described above also apply to nationals of Iceland, Liechtenstein, Norway and Switzerland.

## Your Key Contacts



**Verity Buckingham**  
Counsel, Milton Keynes  
D +44 20 7320 3963  
[verity.buckingham@dentons.com](mailto:verity.buckingham@dentons.com)