



Brexit

Key issues for people, reward and mobility

1 February 2020

Background

On 31 January 2020 (at midnight CET, 11pm UK time, **exit day**), the UK ceased to be a member state of the EU, and the European Communities Act 1972 – the statutory basis for giving effect to EU law in the UK – was repealed. This is a profound change, but its immediate impact on UK law and regulation is limited in two important ways.

- Under the UK-EU agreement on the UK's withdrawal from the EU (the **Withdrawal Agreement**), virtually the whole of EU law remains "applicable to and in the UK" from exit day until at least 31 December 2020. The Withdrawal Agreement calls this the "transition period". Here, we call it the "**implementation period**", following terminology used in the European Union (Withdrawal Agreement) Act 2020 (the **Act 2020**). The 2020 Act implements the Withdrawal Agreement into UK domestic law.
- Under the European Union (Withdrawal) Act 2018 (the **2018 Act**), all the EU law that applies in and to the UK immediately before the end of the implementation period (a substantial proportion of all UK regulation) will continue in force as UK domestic law (with some modifications) unless and until it is replaced or amended by new UK legislation. Under powers contained in the 2018 Act, the UK government has already issued a large number of statutory instruments to amend that "on-shored" body of law, and make it fit for purpose as domestic UK legislation in a post-Brexit environment. These statutory instruments are due to come into force at the end of the implementation period.

The Withdrawal Agreement provides for the implementation period to end on 31 December 2020, unless the UK and EU agree, by 1 July 2020, that it should be extended for a further one or two years. The UK government has indicated that it does not wish to seek such an extension, and the 2020 Act states that the implementation period ends on 31 December 2020.

Deal or no deal?

The implementation period gives the UK and EU a time-limited opportunity to negotiate, against a stable background, the terms of their future relations in respect of trade and the other areas that are currently regulated by EU law. At the end of the implementation period, any given area of UK-EU relations either will or will not be regulated by a new UK-EU agreement (a **future relationship agreement**).

When the Withdrawal Agreement was being negotiated, "deal or no deal?" was used to refer to the fact that at the point when the UK ceased to be an EU member state, there would either be no agreement on the terms of the UK's withdrawal (and so effectively a legal vacuum in UK-EU relations), or the UK would enter an implementation period in which, for the duration of that period, the status quo would be largely preserved. At the end of the implementation period, it is possible that the UK and EU will have reached agreement on all the aspects of their future relations that will be governed by future relationship agreements, or none of them, but it is also quite likely that they will have reached agreement on some, but not on others, so that the question "deal or no deal?" can only be answered for each

individual topic or sector. Indeed, in some areas it may take time before it is clear whether the UK and EU will seek to reach a bilateral agreement at all, rather than, for example, simply relying on the provisions of existing multilateral instruments like the WTO rules.

It will therefore necessarily take time for clarity on any possible "deal" outcomes to emerge. The shape of "no deal" outcomes is more predictable, but here too there is some uncertainty, since an agreement reached in one area may have effects that spill over into areas that are not explicitly addressed by it.

People and reward

Whether or not the UK reaches a deal with the EU, there will be very little immediate impact on employment law or pensions law. In either scenario, as noted above, the 2018 Act will transpose the vast majority of current EU law into our domestic law, so all the current employment protections which stem from EU law will be preserved.

There are two relatively minor areas where there will be an impact if no deal is reached by the end of the implementation period:

- While existing European Works Council (EWC) rights will be protected, no new requests to set up an EWC or information and consultation procedure will be permitted. A request for information, or to set up an EWC, which has been made but not completed before the end of the implementation period will be allowed to complete. If you have an EWC in place, we recommend you review the agreement, given that there will be no reciprocal arrangement between the UK and the EU after the end of the implementation period.
- If a UK employer is insolvent, UK and EU employees working for the employer in an EU country may not be covered under that country's national guarantee fund. The government has confirmed that employees living and working in the UK for a UK or EU employer will continue to be protected in the same way as they are now. However, whether EU and UK employees working in an EU country for a UK employer are protected will depend on how that member state has implemented the Insolvency Directive.

Mobility

Immigration has been a contentious topic throughout the Brexit referendum debate and the subsequent withdrawal negotiations. The most important point to note is that EU nationals and their family members already living in the UK are able to stay, provided they arrive in the UK before 31 December 2020.

In either scenario, EU nationals will need to apply for new residence documentation to be able to remain in the UK, even if they already have a document certifying permanent residence, as will non-EU national family members of EU nationals who were sponsored by said family member to come to the UK. The new settled status is a digital status, managed via a personal portal on gov.uk.

The UK has also made separate arrangements with each of the participating EFTA members and Switzerland as they are not party to the negotiations between the UK and the EU.

The government has confirmed there will be no requirement to carry out fresh right-to-work checks on existing employees. For new employees who are EU nationals, the employer will be given access to the individual's personal portal in order to check their right to work.

Withdrawal Agreement

Under the Withdrawal Agreement, EU nationals living in the UK are protected. They will be able to bring close family members to the UK after the end of the implementation period, under the more favourable EU system, providing that the relationship exists on 31 December 2020. Children born after this date are also covered.

EU nationals, and their family members who are in the UK already, or arrive before the end of the implementation period, will need to apply for new residence documentation prior to 30 June 2021. If the implementation period is extended, then we expect the application deadline will also be extended.

EU nationals who obtain settled status will be able to leave the UK for up to five consecutive years without losing their right to return (rather than it reverting to the two-year period that is usually applicable for someone with indefinite leave to remain), provided they return to the UK before the end of the implementation period. Individuals who do so will benefit from the Withdrawal Agreement protections and will be eligible to apply for settled status.

Post- implementation period

The government plans to end free movement to the UK as soon as possible. The previous government published a long-awaited immigration white paper on 19 December 2018. It proposed extending the existing points-based system to cover EU nationals and to make a number of changes, such as abolishing the labour market test, which would apply to all migrant workers. It is not clear whether Boris Johnson's government will adopt some or all of these proposals.

The Migration Advisory Committee (MAC) has a new commission to review the Australian points-based system and other international comparators. The government has also asked the MAC to examine the question of salary thresholds amid speculation that the government may remove the £30,000 threshold currently in place. The new system will not come into effect until 1 January 2021.

Employers should keep open lines of communication with their EU, and EEA, national employees and consider what support they can offer them.

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