



Brexit

Key issues for people, reward and mobility

8 October 2020

Background

The UK left the EU on 31 January 2020 (**exit day**). However, this profound change has so far had limited impact on UK law and regulation. Under the agreement on the UK's withdrawal from the EU (the **Withdrawal Agreement**), the UK continues in most respects to be treated as if it were still part of the EU from exit day until 31 December 2020 (the **implementation period**). The Withdrawal Agreement provided a mechanism to extend the implementation period but it has not been used. It therefore appears that the full legal consequences of Brexit will begin to be felt from 1 January 2021.

The Withdrawal Agreement does not regulate future trade between the UK and EU, or any other area of potential future EU-UK cooperation, except to a limited extent in relation to Northern Ireland. It remains unclear if a deal on future UK-EU relations will be agreed by 31 December 2020. In some areas there is an obvious legal fall-back framework in the absence of a deal (for example, if agreement is not reached on tariff-free trade, "WTO rules" will apply); in other areas there is not. Whatever happens, those trading between the UK and EU will face significant regulatory changes (for example in relation to customs). It also seems likely that, if the UK and EU reach a deal in the coming weeks, it may be a fairly "thin" agreement, meaning that negotiations on some aspects of the UK-EU post-Brexit relations may continue well beyond 2020.

For more detailed background, click [here](#).

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, the European Union (Withdrawal) Act 2018 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:

- No new requests to set up a European Works Council (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. The European Commission has issued [guidance](#) on the implications for existing EWCs.
- 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 was 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. EU nationals and their family members who take up residence in the UK prior to 31 December 2020 will also be able to stay.

By 30 June 2021, EU nationals already living in the UK, or arriving before 31 December 2020, will need to apply to the EU Settlement Scheme (EUSS) for new residence documentation to be able to remain in the UK. The hard deadline to apply is 30 June 2021, but we would recommend applying as soon as possible. The requirement to apply to the EUSS applies even if an EU national already has a document certifying permanent residence. Non-EU national family members of EU nationals who were sponsored by said family member to come to the UK will also need to apply to the EUSS.

EU nationals and their family members who apply to the EUSS will be granted pre-settled status, if they have been living in the UK for less than five years, or settled status, if they have been living in the UK for five years or more. Once a decision has been made, an approval letter will be issued, together with a digital status, which can be 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. During the six-month grace period from 1 January 2021 until 30 June 2021 there will be no change to how employers conduct right to work checks – checking an EU national's passport or ID card will continue to establish a statutory excuse. This does not negate the need for new arrivals in the UK, who do not have any legacy rights, to obtain work permission (for example, a Skilled Worker visa).

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 who obtain settled status will be able to leave the UK for up to five consecutive years without losing their right to return. Those who obtain pre-settled status as they have not yet completed five consecutive years in the UK can leave the UK for two years without losing this status. However, an absence in excess of six months in any 12-month period will have a negative impact of their ability to apply for settled status in the future.

Post- implementation period

From 1 January 2021, a new immigration system will be in place for individuals arriving in the UK. As of this date, EU nationals and non-EU nationals will be treated equally due to the end of free movement. For example, an EU national will need to have a job offer from an approved sponsor and apply for a skilled worker visa in order to work in the UK.

The new immigration system has incorporated much of the advice and suggestions from the Migration Advisory Committee as the minimum salary threshold has been reduced and salaries within a certain band can be traded for qualifications. Additionally, the resident labour market test will no longer be required and, initially, the cap on skilled workers applying to work in the UK will be removed.

A popular thought had been to create a route for "lower-skilled" workers to ensure that certain jobs were still filled. However, the government has confirmed that it will not implement such a route and UK businesses will need to adapt and adjust to the end of free movement.

Full details as to the new application processes and visa categories are expected imminently.

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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