

# Future immigration scenarios for the EU workforce



Free movement of people is expected to end in the event of the UK leaving the EU, bringing a significant change to businesses which are dependent on EU workers.

**Lynne Marr**, Brodies LLP, looks at the options

The EU and the UK have now agreed on an extension to the Brexit process. In the event that the Withdrawal Agreement is approved by the House of Commons by Friday (29 March) the Article 50 negotiating period will be extended until 22 May. If the House of Commons, in a third meaningful vote, does not accept the Withdrawal Agreement by Friday, then the “new” exit day will be 12 April.

This article focuses on the options of a ratified Withdrawal Agreement and a no-deal Brexit on 12 April.

The UK Government has sought to reassure EU nationals resident in the UK that, post-Brexit, they can continue living and working in the UK by applying for settled status through the new UK Settled Status Scheme. However, many affected individuals do not realise that settled status is not automatically granted; they must actively apply or risk being in the UK unlawfully and liable to removal.

The UK Settled Status Scheme most recently

has been the subject of criticism by the UK Parliament’s Human Rights Committee. The Committee expressed concerns over the Scheme, in particular in respect to the lack of physical proof of status and the ambiguity about the situation of those who miss the deadline for applications.

While the Settled Status Scheme might reassure employers with EU nationals in their workforces, it does not necessarily help those businesses relying on EU workers who work in the UK for short term, seasonal work rather than permanent employees. The proposed skills-based immigration system, to be introduced from 2021, provides little assistance in relation to that issue.

Providing certainty for EU, EEA, and Swiss nationals currently in the UK - Settled Status

If the proposed withdrawal agreement is ultimately ratified and the proposed transitional period implemented, EU, EEA and Swiss nationals resident in the UK at 31 December 2020 will be able to apply for either Settled Status (if they have been resident in the UK continuously for five years) or pre-Settled Status (if they have been resident in the UK for less than five years). As matters currently stand, an application for either status must be made by 30 June 2021 or the individual will be in the UK unlawfully. The application is completed online for free, and can be made now. Once this status is granted, the indi-



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>> vidual holding it will have indefinite leave to remain in the UK to live and work and can access key services (NHS, education and housing). The status will be lost if the individual leaves the UK for five years. Settled Status can also be used as the basis for a future application for British citizenship.

If there is a no-deal exit on 12 April, the Settled Status Scheme will remain in place. However, the most up-to-date position is that only EU, EEA and Swiss nationals in the UK on 29 March 2019 can make an application and will have to do so by 31 December 2020 (rather than 30 June 2021). Any EU nationals arriving after a no-deal Brexit on 29 March 2019 can stay in the UK for up to three months or, if they wish to stay for longer, they have to apply for a new status, as explained below.

#### Worker's position from March 2019 - 31 December 2020

##### **If there is a deal**

If the proposed withdrawal agreement is approved, workers from the EU will be able to continue moving freely into the UK until 31 December 2020, as they currently do. This means that temporary workers will be able to travel to the UK, work and return to their member state.

##### **If there is no deal**

If there is no deal on 12 April, free movement will stop on that same day. In January 2019, the UK Government announced a "fix" to cover the period until the introduction of the UK's new skills-based immigration system from January 2021. Until then, EU, EEA and Swiss nationals who wish to live and work in the UK for short periods of time of up to three months can continue doing so. If, however, they plan to stay in the UK for more than three months, they have to apply for "European Temporary Leave". This allows holders to stay in the UK for up to three years and must be applied for online within three months of arriving in the UK. Employers should ensure that such workers are aware of the need to apply.

Will EU, EEA and Swiss nationals be able to work in the UK after 2020?

The UK Government's new skills-based immigration system is expected to come into force in 2021. A central principle of the new system is that skilled workers will be welcome to the UK provided that they are sponsored by an employer. This will be similar in many ways to the current tier 2 general sponsorship system. While the Government has confirmed that there will be no cap on the number of skilled workers coming into the UK and will relax some of the administrative burdens on sponsors - including the need to carry out the cumbersome resident labour market test - this route will apply only to workers coming to fill posts which require qualifications at RQF level 3 or above (Higher or A level) and with a minimum salary threshold of £30k. The latter is like-



A central principle of the new [skills-based] system is that skilled workers will be welcome to the UK provided that they are sponsored by an employer

ly to mean that this route will not assist businesses looking to bring in lower skilled or seasonal workers.

While the UK Government has clearly stated that it does not intend to have a dedicated route for unskilled workers into the UK, it has acknowledged the difficulty this may cause in some sectors which are reliant on lower skilled workers from the EU, including seasonal workers. To address this, the Government proposes to create a route for temporary short-term workers at any skill level to work in the UK. Further details are not yet clear but it will likely be very restrictive in terms of the number of applicants allowed to enter the UK; the nationalities it will apply to and the duration (12 months with a further 12 month cooling off period). Workers coming to the UK under this route will have to pay for the visa and whilst in the UK, they will be restricted from:

- access to public funds;
- bringing dependents with them; and
- switching to other immigration categories or settling in the UK longer term.

It is intended to be a transitory measure to allow affected employers to change ways of working so that they become less reliant on EU labour, and is not expected to remain in place after 2025.

Will employers in the UK realistically be able to continue relying on EU workers for seasonal work post Brexit?

Undoubtedly, this will be very difficult.

The Government is expanding its youth mobility scheme and expects to continue to attract young workers who will engage in lower skilled work. It seems unlikely that this will provide a solution to employers relying on seasonal workers.

Perhaps of greater assistance would be the permanent introduction of seasonal workers schemes in sectors where there is a reliance on seasonal peaks of work. On 06 March 2019, the Government opened a seasonal workers pilot which allows fruit and vegetable farmers to recruit up to 2500 non-EU workers for seasonal work for up to six months. The pilot is intended to inform future Government immigration policy and we may see the reintroduction of seasonal worker schemes in the future, although perhaps in certain parts of the farming sector only.

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