

What are the options for employing EU nationals from January 2021?

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Coronavirus has impacted almost every aspect of life, including how we work and travel. However, the UK Government has stated that the one thing the pandemic will not impact is the date that the UK's Brexit transition period will end; 31 December 2020. This means employers should be preparing now for significant changes happening at the end of this year.

Current position

The current transition arrangements, which allow EU nationals to come to the UK without restriction, are due to end on 31 December 2020. While those EU nationals who come to the UK before this date should be able to remain in the UK after the end of the Transition Period - if they qualify via the settlement scheme - EU nationals who arrive from 1 January 2021 will be subject to the 'new' points-based system. This means that employers who recruit a significant number of EU nationals should plan any future recruitment with that in mind.

EU Settlement Scheme

Employers who currently employ EU nationals (and their family members) will be familiar with the EU Settlement Scheme, which gives certain EEA and Swiss nationals and their family members the ability to apply to stay in the UK indefinitely after Brexit. While many employers will currently be focusing on COVID-19 and the impact on their workforce, it is important for EU employees to continue applying for leave under the scheme, if they are entitled to do so.

The deadline for applying for those EU nationals already in the UK is June 2021, however we are anticipating delays in applications being processed under the scheme, in light of COVID-19 and UKVI closures. Therefore, employers should bear this in mind and continue to support and encourage their staff to apply under the scheme, to avoid any issues in the future and to enable employees to evidence their right to work.

Future points-based system

New immigration rules will apply to EU nationals coming to the UK from 1 January 2021. They will, in most cases, have to

be eligible for sponsorship if they want to work in the UK.

The current points-based immigration system covers 'highly skilled roles' (ie graduate level or above) and requires a minimum salary of at least £30,000 to attract sponsorship. The new system will result in a reduction in the minimum salary required for sponsorship (in most cases £25,600, but it may be £20,480 in some circumstances). The new system will also cover 'medium skilled' jobs, so long as they meet the minimum salary requirements in place. Therefore, under the new rules from 1 January 2021, employers will only be able to recruit EU nationals under the new points-based system if they are for 'medium skilled' or highly skilled jobs, and if they earn the minimum salary levels. Employers will also have to put a sponsor licence in place to sponsor such workers and should be applying for them now if they are needed from 1 January 2021.

There are also significant costs applicable to sponsorship including visa fees, the Immigration Skills Charge and the Immigration Health Surcharge. It will be important for employers to understand the limits and costs of the new rules to plan for any recruitment under this route from January 2021.

Low skilled roles

Those roles classed as 'low skilled' are noticeably absent from the future points-based system. The Government has announced that, with the exception of the current youth mobility arrangements (which allow young people from certain countries to come to the UK for up to two years) and the extension pilot scheme for seasonal workers in agriculture, there will be no route for lower-skilled workers.

What should employers be doing now?

The new points-based system is a radical departure from the current system of freedom of movement for EU workers - and there are some important differences from the current Tier 2 rules. Although there has been some relaxation of the rules for skilled workers, the fact that there will be no route for the lower-skilled is significant and will be a concern for some employers. Businesses should identify any potential recruitment gaps now and decide how best to plug them.

Employers should also budget for increased visa and associated costs (that are not currently relevant for EU workers prior to 31 December 2020). Those costs could be significant for those who recruit a significant number of overseas workers and can amount to several thousand pounds per head.



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