



Brexit snapshot

BREXIT AND IMMIGRATION LAW ISSUES

FEBRUARY 2020

Current legislative position¹

The European Union Withdrawal Act 2018, as amended by the European Union (Withdrawal Agreement) Act 2020, (the "Act") repealed the European Communities Act 1972 (the "ECA") on Exit Day (31 January 2020). However, the Act provides for the ECA to continue to have effect until the end of the implementation period, currently 31 December 2020. The Act was necessary to give effect to the Withdrawal Agreement between the EU27 and the UK dated 29 January 2020 (the "Withdrawal Agreement").

How does Brexit affect Free Movement?

Free Movement will end on 31 December 2020. EEA nationals entering the UK after 31 December 2020 will be subject to future immigration controls.

EU, EEA and Swiss citizen nationals (excluding Irish nationals) who are currently residing in the UK, or who enter the UK prior to the end of the implementation period will be required to apply for pre-settled or settled status under the EU Settlement Scheme and obtain either of these statuses by 30 June 2021.

It is still not known what the future immigration controls will be; however, there will be a new immigration system and there are three likely visa routes available to EU nationals.²

Option 1: Points Based System

It has been suggested that there may be a new immigration system whereby applicants may apply for a points based visa that will allow them to undertake employment in the UK.

Applicants will have to show an interest in working in the UK and will be awarded points based on their age, previous skills and experience and UK earnings. This will most likely require applicants to obtain a job offer from a UK employer.

There may be a monthly quota and the highest scoring applicants will then be granted a visa. Applicants who are not successful may then have to either re-apply the following month or their applications will automatically be considered the following month.

¹ For further information on the current position in relation to the negotiation of a Free Trade Agreement between the UK and the EU, refer to our client briefing "[Brexit: where do we go from here?](#)" (February 2020).

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/860669/PBS_and_Salary_Thresholds_Report_MAC.pdf

Option 2: Youth Mobility Scheme

This will be similar to the existing Tier 5 Youth Mobility Scheme which is available to applicants who are nationals of Australia, Canada, Japan, Monaco, New Zealand, Hong Kong, the Republic of Korea and Taiwan and aged between 18-30.

This route will be available if there is reciprocal agreement with the UK and the relevant Member State.

Applicants will be granted a two-year visa; however this route most likely will not lead to indefinite leave to remain (ILR).

Option 3: Sponsorship

The Tier 2 sponsorship route currently allows employers to obtain a Sponsor licence to employ Migrant worker. In most circumstances, employers are required to advertise the role before the Migrant applies for their visa. The role must be highly skilled and the minimum salary to be paid is £30,000 per annum.

It has been suggested by the Migration Advisory Committee (MAC) that the Resident Labour Market Test should be abolished and that the current minimum salary threshold should be reduced. The current Tier 2 sponsorship route may be amended to include EU, EEA and Swiss citizen nationals.

Alternatively, there may be a completely new sponsorship system. It is still unknown what this process will entail.

Visiting the UK

There is a possibility that EU nationals will not be able to enter the UK using their national cards after 2020; however, further details will be announced later this year.³

For general visits it is likely that EU nationals will be able to enter the UK for a period of up to 3 months without applying for a visa.

What should the current Brexit-related priorities be for employers?

- Consider how many of your existing employees are affected by Brexit and whether you would like to provide them with further details regarding the EU settlement scheme.
- If you use recruiters, consider informing them that this may affect future hires post 31 December 2020.
- Consider budgets for future hires and how long it may take for visas to be processed as this may impact employment start dates.
- Review your existing right to work checks and ensure that you conduct the correct checks prior to every new hire.

³ https://www.gov.uk/guidance/visiting-the-uk-from-1-january-2021?utm_source=cf0bdabb-cd53-44e0-9051-2440a881e27a&utm_medium=email&utm_campaign=qovuk-notifications&utm_content=immediate

Contact us



Kimia Sepahzad

Immigration Consultant

T: +44 20 7809 2165

E: Kimia.Sepahzad@shlegal.com

© Stephenson Harwood LLP 2020. Any reference to Stephenson Harwood in this document means Stephenson Harwood LLP and/or its affiliated undertakings. The term partner is used to refer to a member of Stephenson Harwood LLP or a partner, employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Stephenson Harwood LLP's affiliated undertakings.

Full details of Stephenson Harwood LLP and or/its affiliated undertakings can be found at <https://www.shlegal.com/legal-notices>.

Any contact details and information that you provide will be held on a database and may be shared with other Stephenson Harwood offices and associated law firms. For more information in relation to how your personal information is processed please read our privacy policy which can be accessed [here](#).

Information contained in this document is current as at the date of first publication and is for general information only. It is not intended to provide legal advice.