



December 2018

Brexit Withdrawal Agreement: What does it mean for employers?

Prime Minister Theresa May has delayed Parliament's vote on the proposed Withdrawal Agreement which would govern the terms of the UK's departure from the EU. It remains to be seen whether there will be sufficient support for the deal when Parliament comes to vote on it in January 2019. But what would the deal mean for employers and the 3 million EU nationals living in the UK? And what would be the consequences of a 'no-deal' scenario?

Preserving the status quo

A key feature of the Withdrawal Agreement is a transition period which would run until 31 December 2020. In terms of immigration, the aim of the transition period is, broadly, to preserve the status quo. This means that any EU nationals and their family members already living and working in the UK as at the date the UK leaves the EU would be allowed to continue to do so, potentially indefinitely. In addition, EU nationals, and their family members, who arrive in the UK before 31 December 2020 would also be entitled to live and work here, with the potential to stay indefinitely. The Withdrawal Agreement provides for reciprocal arrangements, so the same would apply to any UK nationals currently living in another EU member state, and those who migrate prior to 31 December 2020.

A registration process

The UK Government plans to introduce a new requirement for all EU nationals to apply for a status document after Brexit and the Withdrawal Agreement allows for this. All EU nationals living in the UK as at the date of Brexit, or who arrive during the transition period, will be required to apply for registration under the new EU Settlement Scheme. Those with at least five years of residence will apply for "settled status" which would give them a right to live and work in the UK indefinitely; those with less than five years' residence will need to apply for "pre-settled status" until they reach the five years necessary to apply for settled status. The cost of registering will be £65 per person (or £32.50 for children). EU nationals who already have a permanent residence card under current arrangements will be able to "swap" this for settled status free of charge. Under the Withdrawal Agreement, individuals will have an extended grace period until 30 June 2021 to apply.

A look to the future...

The Withdrawal Agreement does not contain any provisions for immigration beyond the end of the transition period. The UK Government is yet to publish its policy in this regard and a white paper setting out the

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proposals was expected in December 2018 but may now be delayed. The draft Political Declaration published, which sets out the framework for the future relationship between the EU and the UK, makes it clear that there will be an end to freedom of movement from 1 January 2021. The Government has also confirmed that there will be no preferential treatment for EU nationals post-transition. This means EU nationals coming to the UK from January 2021 onwards will likely need to obtain visas in the same way as non-EU nationals currently do. Strict requirements apply to such visas, such as minimum skill requirements, minimum salary thresholds, an annual limit on numbers and a requirement to show that a suitable candidate cannot be found from the resident labour market. The costs associated with non-EU visas are significantly greater than those for EU nationals (currently around £8,000 per visa for a five-year visa). Critically, employers currently require a sponsor licence in order to hire non-EU nationals and will almost certainly need a licence to hire EU nationals post-transition. Many employers who do not yet have a licence are applying for one now in anticipation of the extension of the regime.

Deal or no deal?

If the Withdrawal Agreement is not approved, the transition period until 31 December 2020 would fall away. The Government has confirmed that, in a "no-deal" scenario, EU nationals living in the UK as at 29 March 2019 will still be able to stay indefinitely. They will also still need to register under the EU Settlement Scheme but will only have until 31 December 2020 to do so (rather than the extended deadline of 30 June 2021 under the Withdrawal Agreement). The Government has also confirmed that a new immigration regime would still apply from 1 January 2021, with no preferential treatment being afforded to EU nationals (i.e. the position would be the same as if the Withdrawal Agreement were approved). What is not clear is what would happen to EU nationals arriving in the UK between 30 March 2019 and 31 December 2020. It is likely that such individuals would not have the right to stay in the UK indefinitely but may have a limited right to live and work in the UK until the new immigration regime is implemented in January 2021.

What can employers do now?

Despite the uncertainty, employers can take steps now to prepare for a deal or no-deal scenario. Employers should consider:

- undertaking an audit of staff to ascertain numbers of EU employees, to help inform strategic planning
- offering information sessions and/or advice surgeries for existing staff on the current position and options
- supporting applications for EU residence documentation under the current regime and budgeting for applications under the EU Settlement Scheme post-Brexit
- obtaining an immigration sponsor licence or ensuring their current licence is up-to-date and fully compliant with the current immigration rules.

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