



Brexit and the consequences for business immigration (2019) 5th February 2019

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Brexit and the consequences for business immigration (2019)

The law as stated during this webinar is
up to date as of **22nd January 2019**

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Agenda

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- How did we get here, and when do the immigration changes take place?
- What is the current law applicable to EU Nationals and their family members?
- An overview of Appendix EU: Intention, Implementation dates, Pilots
- The Application process and an overview of requirements
- What sorts of things can businesses do to protect their position and staff?
- Non-EU immigration: what lies ahead?
- Conclusion

How did we get here and when
do the immigration rules and the
changes take place?

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An Overview of the Relevant Dates

- At 11pm on 29th March 2019, the UK leaves the EU:
 - Withdrawal agreement (WA) becomes effective (as it stands)
 - this is still an ongoing negotiation as you will all readily appreciate so please watch this space!
- From 29th March 2019-31st December 2020 there is what is termed, a transition period:
 - free movement rights end on 31st December 2020;
 - from 1st January 2021, EU National arrivals will be subject to a wholly new, yet presently undetermined immigration system

**What is the current law
applicable to EU Nationals and
their families?**

Current Law Applicable to EU Nationals and their Families

The Free Movement Directive

- EU citizens (including non-EU family members) must be admitted to the UK and can reside for up to three months from the date of entry, provided they meet basic criteria, for example not becoming a burden on the social assistance system of the UK.
- EU citizens wishing to stay beyond three months can generally only do so where they are exercising 'Treaty rights' - until they become entitled to permanent residence in the UK (usually after exercising Treaty rights in the UK for five years).

Current Law Applicable to EU Nationals and their Families

The Immigration (European Economic Area) Regulations 2016

- These Regulations exist to transpose primary European law into UK law as well as the case law of the Court of Justice of the European Union (CJEU)
- They apply to EU nationals in the UK and in some cases to British Nationals as and to those seeking to enter the UK and also to their family members
- CJEU case law applies. The CJEU is the highest court specializing in EU law
- In relation to direct family members, e.g. the spouse/civil partner/durable partner previously granted a residence permit/dependent child under 21 years old any refusal of an application would ordinarily trigger a right of appeal to the First Tier Tribunal.
- Very recently, the SSHD appears to accept that the 2016 Regulations are unlawful in restricting the appeal rights of EFM and that the Regulations will as a consequence be amended.

Overview of Appendix EU

Overview of Appendix EU

Intention

- It is a new scheme for EU Nationals and their family members who wish to remain living in the UK after 30th June 2021.
- It is to 'enable' indefinite leave to remain for those EU Nationals and their family members already in the UK or who enter the UK by 1st January 2021.
- The focus is on continuous residence for five years as this will then count as settled status under the new regime.
- After 31st December 2020, permanent residence documents will not be valid as proof of residence in the UK.
- It purports to be a simpler set of rules although we think this is still debatable.

Overview of Appendix EU

Implementation and Key Dates

- No change in free movement rights in the UK until 31st December 2020.
- The scheme is now open on a pilot voluntary basis for EU nationals (but not their family members) and it is open to those who work at hospitals and universities with sponsor licenses, or are a looked -after child of one of the local authorities participating in the pilot.
- The new scheme is fully effective by 30th March 2019.
- EU nationals and their family members who are in the UK must apply by 30th June 2021 even if they have permanent residence.
- Applicants need to have arrived into the UK by 1st January 2021 to apply under the scheme.

The Application Process and Overview of the Requirements

The Application Process and Overview of the Requirements

To Use a Form or Not to Use a Form, That is the Question...

- The application is made using the required application process which can be online or in paper form. The fee is in most cases £65.
- It can be made online via 'EU EXIT: ID DOCUMENT CHECK APP' or using a paper form.
- They are described as being short, simple and easy to use.
- They take approximately 15-20 minutes to complete.

The Application Process and Overview of the Requirements

Eligibility

- Does the applicant fall within the scope of Appendix EU?
- Does he or she meet the eligibility (also known as residence) requirements?
- Does he or she meet the suitability requirements?
- If so, proceed to make, what should be, a valid application.

The Application Process and Overview of the Requirements

Scope I

1. EU nationals in the UK on 31st December 2020 include nationals in alphabetical order of:

AUSTRIA; BELGIUM; BULGARIA; CROATIA; CYPRUS; DENMARK; GERMANY;
GREECE; HUNGARY; CZECH REPUBLIC; IRELAND; ESTONIA; ITALY; LATVIA;
FINLAND; FRANCE; LITHUANIA; LUXEMBOURG; MALTA; THE
NETHERLANDS; POLAND PORTUGAL; ROMANIA; SLOVAKIA; SLOVENIA;
SPAIN and SWEDEN

2. Dual British/EU nationals and some family members of British nationals.

The Application Process and Overview of the Requirements

Scope II

3. Nationals of other countries who meet a number of requirements as set out within the rules:

- e.g. if a British National has gone/goes to work in another EU country, the couple are married or marry when they are there and fulfill a number of other set criteria (Surinder Singh rationale).

- Following *Banger v SSHD C-89/17* the rules may yet still be amended to include the unmarried partner of a British National.

- Family members of EU nationals in the UK by 31st December 2020, or after this date if there was a familial relationship before this date, or, if for example there is a child born after this date- family members are the spouse/civil partner/durable partner/dependent child under 21 years old.

- 'Retained rights' e.g. family members' rights are retained after death or divorce from an EU national as long as the other requirements are met.

The Application Process and Overview of the Requirements

Eligibility for Settled Status/Indefinite Leave to Remain

- Relevant EU citizen or a family member of a relevant EU citizen or a family member who has retained the right of residence, and:
 - has a document certifying permanent residence and there has been no supervening event; or
 - is a relevant EU citizen or a family member of a relevant EU Citizen or a family member who has retained the right of residence; and
 - there is valid evidence of their indefinite leave to enter or remain.

Or:

- the applicant has been resident in the UK for a continuous period of 5 years and no supervening event has occurred. There are some exceptions to this 5- year requirement.
- Supervening events: Absence from the UK for more than 5 consecutive years since completing 5 years residence/being granted indefinite leave to remain.

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The Application Process and Overview of the Requirements

Pre-Settled Status/Limited Leave to Remain I:

- Eligibility
 - Applies to those applicants who do not have the required 5 years continuous residence, but would otherwise meet the eligibility requirements for settled status
 - Once those with pre- settled status have 5 years (as above) they can apply for settled status
 - Those who have permanent residence documentation will need to apply to change it over to settled status

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The Application Process and Overview of the Requirements

Pre-Settled Status/Limited Leave to Remain II:

Suitability

- The application will be refused where there is:
 - a deportation order;
 - removal due to a misuse of rights;
 - an exclusion order

- The application might be refused where:
 - there is misleading information/document/facts material to the decision, and a refusal is considered to be proportionate in all of the circumstances

The Application Process and Overview of the Requirements

Pre-Settled Status/Limited Leave to Remain III:

- A VALID APPLICATION requires:
 - fee paid;
 - biometrics (photographs and fingerprints);
 - passport/ID

What Can Businesses Do Now to Protect Their Position and Their Staff?

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What Can Businesses Do Now to Protect Their Position and Their Staff

The Figures for Net Migration: What Are the Statistics?

- On 29th November 2018, the Office for National Statistics (ONS) reported:
 - net migration for EU nationals coming to the UK was 74,000 in the year ending June 2018;
 - 37,000 EU nationals entered the UK for work in the year ending June 2018, half as many than in 2016;
- ONS reported in 2016 that:
 - 7% of the UK labour force were EU nationals;
 - there was a higher proportions of EU nationals working in certain sectors- wholesale/retail/hospitality approx. 64,000;
 - EU workers are now leaving the UK at the fastest rate since 1997;

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What Can Businesses Do Now to Protect Their Position and Their Staff

- Appendix EU sets out the relevant rules applicable to EU nationals and their family members who are in the UK, or who enter at the dates we have outlined, will be able to remain and settle in the UK.
- Businesses which are heavily reliant on EU national workers will need to consider internal and external questions imminently in order to be prepared which I will outline shortly.

What Can Businesses Do Now to Protect Their Position and Staff

What Can Businesses Do From Now as First Steps I

- Provide support to EU national staff:
 - Identification: how many EU and international staff members does the business have?
 - An EU survey: what sort of support do EU staff feel that they will benefit from?
 - HR departments will need to consider providing support to their staff:
 - updating with regular briefings
 - support to EU staff via access to resources and signposting-holding clinics or workshops
 - providing access to specialist legal advice
 - subsidizing payment of application fees for settled or pre-settled status

What Can Businesses Do Now to Protect Their Position and Staff

What Can Businesses Do From Now as First Steps II

- On a wider level, the British Chamber of Commerce have recommended that all businesses have a “health check” as whether they are large or small, they will inevitably feel the impact of Brexit.
- These checks should include at least the following:
 - management teams considering the impact of Brexit;
 - consultation with board of directors;
 - identifying the location of supplier and customer base;
 - addressing the skills and labour needs over the next few years?
 - requirements to hire someone from outside the UK and the steps needed? (remote working) – is this feasible?
 - what are the plans for future travel to the EU for the servicing of contracts or other purposes business contacts/meetings may be affected.

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What Can Businesses Do Now to Protect Their Position and Staff

What Will the Immigration Rules Look Like After the Transition Period?

- The immigration rules which are to follow the transition period are currently unknown.
- The Migration Advisory Committee in their September 2018 report recommended:
 - Tier 2 could provide a useful template for the new rules- it is currently the main scheme used for securing highly skilled workers with a job offer
 - the cap on numbers should be abolished
 - the scheme should include medium skilled workers
 - salary threshold of £30,000 should be applied
- Low skilled workers:
 - possibility of an extension of the youth mobility scheme
 - seasonal agricultural scheme to be used?

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Non-EU Business Immigration: What is Ahead?

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Non-EU Business Immigration

The Government's White Paper: "The UK's Future Skills-Based Immigration System" (December 2018)

- The key points are:
 - a single system - biggest change in 40 years
 - built around the skills that individuals can bring
 - no cap
 - controlling immigration
 - no difference in rules applicable to EU and non-EU nationals
 - prioritizing skilled workers
 - no requirement for employers to carry out a resident market test
 - temporary short-term staffing routes for businesses which need to adjust
 - Irish and British Citizens will continue to be able to travel between the Common Travel Area
 - there is no intention to introduce a system whereby visitors from EU countries will need to apply for a visit visa

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Conclusion

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Conclusion

- We have addressed the relevant timelines, changes in the rules applicable to EU nationals and their family members as well as the steps that businesses can take now.
- We have also summarized what the Secretary of State has envisaged as the future unified immigration system, which will be applicable to both EU and non-EU nationals namely:
 - The relevant timeline
 - The new set of rules: Appendix EU
 - The impact on business and steps that businesses can take
 - What we anticipate lies ahead

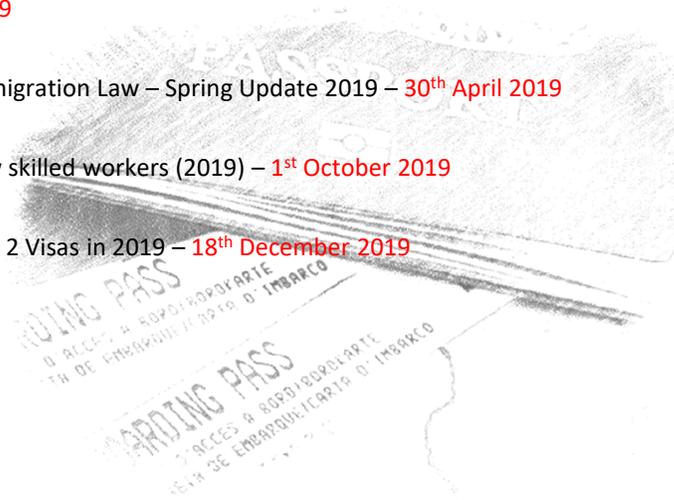
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Thank You!

Upcoming Immigration Law webinars

- Brexit and the consequences for business immigration (2019) – 5th February 2019
- Immigration Law – Spring Update 2019 – 30th April 2019
- Low skilled workers (2019) – 1st October 2019
- Tier 2 Visas in 2019 – 18th December 2019



On Demand Immigration Law webinars

- Challenging immigration decisions – Available until 7th March 2020
- Illegal working – Available until 22nd May 2020
- Tier 2 visa update – Available until 1st October 2020
- Immigration Update – The MAC Report on EEA migration in the UK – Available until 6th November 2020
- Hostile environment measures – Available until 20th November 2020

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We hope you've enjoyed this session.**



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