



LexisNexis®
**Brexit: Immigration and
Employment Law Update**
15th July 2020

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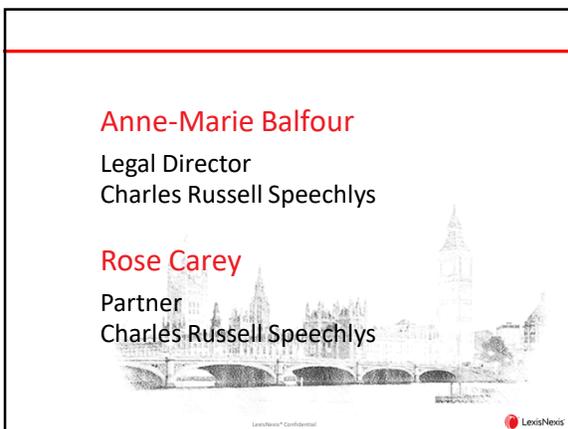


**Brexit: Immigration and
Employment Law Update**

The law as stated during this webinar is
up to date as of **10 June 2020**

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Overview

- Brexit: the current position
- EU law in the UK as a result of Brexit
- Brexit and employment law – the story so far
- Brexit and employment law – what will change?
- Brexit and immigration law - current position
- A new immigration system
- Practical tips

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Brexit: the current position (at the date of this webinar)

- The UK left the EU on 31 January 2020
- There is currently a transition (or 'standstill' or 'implementation') period - time for negotiation of a new agreement governing trade
- For the most part during this transition period:
 - Employment lawyers will not have seen much change
 - EU law and law enforcement continue to apply in the UK
 - UK continues to enjoy the same trading relationship as before
 - UK is no longer represented at the EU institutions
- The transition period will end at 11pm on 31 December 2020
- Negotiations are ongoing between the UK and the EU – there may be changes in the coming months

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EU law in the UK as a result of Brexit - Relevant Legislation

- The European Communities Act 1972
- The European Union (Withdrawal) Act 2018
- The Employment Rights (Amendment) (EU Exit) Regulations 2019/535
 - European Works Councils
- The Employment Rights (Amendment) (EU Exit) (No 2) Regulations 2019/536
 - Employment Relations Act 1999
 - Work and Families Act 2006
 - The Conduct of Employment Agencies and Employment Businesses Act 2003
- The European Union (Withdrawal Agreement) Act 2020

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What happens to EU law in the UK after the transition period?

- Supremacy of EU law in the UK ends
- Existing EU law is converted into UK law: "retained EU law"
 - EU legislation AND UK legislation that derives from EU requirements
 - ECJ judgments
- Power to make small changes to retained EU law so that it works
- New ECJ decisions will not be binding
- Supreme Court (possibly others) not bound by retained EU decisions
- UK need not comply with new EU Directives (Whistleblowing, Work-Life Balance, Transparent and Predictable Working Conditions)
- No more referrals to the European courts

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Brexit and employment law – the story so far

- A "bonfire of workers' rights"?
- 2017 White Paper: 12 guiding principles - protecting workers' rights
- Northern Ireland Protocol: No longer includes provision preventing the UK from regressing below EU employment standards
- 2019 Political Declaration: UK and EU determined to work together to safeguard workers' rights
- Draft 2020 Act: non-regression statement and duty to report regularly on new EU workers' rights
- New Employment Bill? To protect and enhance workers' rights

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Which employment laws might change as a result of Brexit?

- There is scope for divergence from EU law
- Sweeping changes are unlikely:
 - Trade agreements?
 - Much employment law is not EU-derived
 - UK sometimes 'gold-plated' the EU minimum requirements
 - Appetite for change?
- Agency Workers Regulations 2010?
- Working Time decisions on holiday pay and sickness absence?
- Free movement of workers - the biggest issue for employers.

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Brexit and immigration law-current position for EEA nationals

- Free movement still exists until the end of the transitional period on 31 December 2020.
- Right to Permanent Residence under EU law after 5 years residence in the UK. Still available and will be until end of transitional period.
- EU Settlement Scheme for EU, EEA and Swiss nationals – gives immigration status under UK domestic immigration law.
 - After 5 years residence can acquire settled status
 - Pre-settled status if less than 5 years residence in UK

NB to qualify under EU Settlement Scheme must have entered the UK prior to end of transitional period

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Irish Citizens

- The UK, ROI and Crown Dependencies (Isle of Man, Jersey, Guernsey) are part of the 'Common Travel Area'.
- Facilitates free movement for British and Irish citizens within these islands.
- Reflects regional history and has roots in foundation of Irish Free State in 1922, which carried over into establishment of the Republic of Ireland.
- The CTA pre-dates UK membership of the European community (1922 v 1973) and is separate to EEA free movement.
- Irish citizens residing in the UK do not need to do anything.

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Permanent Residence applications

- An 'EEA national' living in the UK for a 'continuous period' of 5 years as a 'qualified person' acquires permanent residence.
- A 'continuous period' ignores absences from the UK for up to 6 months in any given year, up to 900 days absence in total over the 5 year period.
- A 'qualified person' is someone working, self-sufficient, a student, seeking work or a family member of a qualified person.
- No serious criminal convictions.
- Online or paper application form with supporting documents.
- Family members can apply at the same time if they have also been resident for 5 years
- Employees may require backdated P60s, payslips and/or letters confirming their employment
- Facilitates British citizenship now as PR can be backdated

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EU Settlement Scheme

- Open to EU nationals and family members who are resident in UK by:
 - 31 December 2020 (end of the transition period)
- 5 years residence = apply for 'settled status'. Absences no more than 180 days in any 12 month period
- Less than 5 years residence = apply for 'pre-settled status' then settled status after 5 years
- ID and criminal record checks
- Must be able to evidence residence (through government checks or providing documents)
- Deadline for applications 30 June 2021
- No back dating of settled status - granted from date of approval of application

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New immigration system

- Tier 2 less restrictive from 1 January 2021
 - reduction in minimum salary to £25,600
 - removal of resident labour market test
 - lowering of skill level (opens up more roles)
- Possible highly skilled migrant visa later next year
- Tier 1 Post Study Work visa for UK graduates from 2021
- Issues with new system
 - Cost of Tier 2 visas
 - No business person visa
- Tier 1 (Investor) visa – no changes yet. Possibly April 2021. Any changes likely to be around source of funds.

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Practical tips for employers and those advising them

- Consider professional qualifications and regulatory permissions
- Review pension arrangements
- Review European Works Councils
- Posted Workers Directive
- Right to work checks - avoiding discrimination and unfair dismissals
- Restructuring and reorganising – usual obligations apply
- Review employment contracts
- Stay up to date with any changes – the situation may change.

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Immigration top tips for employers

- Consider bringing EU workers to UK before 1 January 2021
- Ensure existing EU staff working in the UK are registered on the EU Settlement Scheme
- Ensure British nationals employed in EU offices follow that country's procedures to ensure their continued right to reside and work
- Consider applying for a Tier 2 Sponsor Licence now
- Assess recruitment needs and which roles may need sponsored workers or if British nationals may need a work visa for the EU.
- If applying for a Sponsor Licence, ensure you will meet compliance requirements by conducting an audit of your record keeping and practices
- Right to work checks

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On Demand Brexit webinars

- Brexit and the consequences for business immigration (2019) – Available until 5th February 2021
- Brexit and dispute resolution (2019) - Available until 6th February 2021
- An update on the movement of EU Nationals into the UK pre and post 29th March 2019 - Available until 15th February 2021
- The UK's future immigration system - Available until 22nd February 2021
- Supply chain management throughout Brexit (2019) - Available until 25th February 2021
- Brexit and arbitration (2019) - Available until 3rd April 2021
- The implications of Brexit for legal practice management (2019) - Available until 7th May 2021
- Brexit for in-house lawyers (2019) - Available until 30th May 2021
- Brexit and family law (2019) - Available until 17th September 2021
- An introduction to devolution (2019) - Available until 19th October 2021
- Brexit – implications for the life sciences sector - Available until 27th November 2021
- Retained EU law post Brexit (2019) – Available until 6th January 2022

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