

BREXIT IMMIGRATION BRIEFING - WHAT NEXT?

With just under two weeks until the end of the transition period, and Brexit talks unlikely to reach a trade deal with the EU before the end of the transition period, businesses and employers in the UK need to be ready for how the new single immigration system will impact them. Global businesses have relied heavily on the absence of restrictions that EU and UK nationals have when working and travelling between the UK and other EU countries. This briefing sets out the key areas of consideration and what businesses can do to prepare.

END OF FREE MOVEMENT

Free movement between the UK and the EU will be ending at 11 pm on 31 December 2020. Any EU citizens who have arrived in the UK prior to this will be able to live, study and work in the UK without restriction. EU national's resident in the UK by the cut-off date will need to submit their applications under the EU Settlement Scheme by 30 June 2021 (unless reasonable circumstances exist) to be able to continue living in the UK.

Any EU nationals, except Irish citizens, arriving in the UK after this will be subject to the new single immigration system. They will be expected to have the appropriate visa or work permission in place when arriving in the UK.

Businesses may therefore wish to consider whether it is possible for any EU nationals who are due to begin their employment in the UK in early 2021 to enter the UK for residency purposes by 11 pm on 31 December 2020.

Frontier worker permits are also now available to those who have been or started working in the UK before the end of the year but retain their primary residence overseas. Businesses and cross-border workers may therefore wish to consider whether this is an arrangement that would work for them.

BUSINESS VISITORS

Visitors from current EU countries travelling on their national passport, will not need a to apply for a visa before arriving in the UK if their visit will be a short holiday or business trip of no more than 6 months.

What an EU national can do in the UK as a business visitor will however be limited and will not allow for the informal cross-border work that many businesses have been used to. Regular business travellers to the UK should therefore consider whether they meet the requirements for a frontier worker permit.

Free movement ends at 11 pm on
31 December 2020.

What steps should employers take now?

- Remind your EU national employees in the UK to apply for status under the EU Settlement Scheme by 30 June 2021.
- Assess whether any EU national employees qualify for a frontier worker permit if they are not entitled to status under the EU Settlement Scheme.
- Implement a system to track your business visitors and their activities between the UK and EU in advance.
- Consider moving any new EU national hires to the UK before 31 December 2020.
- Apply for a Sponsor Licence, if you do not already have one, so that you can employ overseas nationals EU in the UK.
- If you have an existing Sponsor Licence, assess whether this should be updated or you should apply for an additional category to extend its scope.
- Ensure that your record keeping and HR systems are adequate to meet the obligations set by the Home Office.

From 1 January 2021 onwards all visitors to the UK may only carry out the below general business activities:

- attend meetings, conferences, seminars and interviews;
- give a one-off or short series of talks (unless these are organised as commercial events that will make a profit for the organiser);
- negotiate and sign deals and contracts;
- attend trade fairs, for promotional work only, provided they do not directly sell to the public;
- carry out site visits and inspections;
- gather information for their employment overseas; and/or
- be briefed on the requirements of a UK based customer as long as the work is carried out outside of the UK.

Employees of multinational companies will be able to carry out additional intra-corporate activities including advising, consulting, troubleshooting, internal project work and some training as long as it is predominantly classroom based. Internal auditors may also carry out regulatory or financial audits at a UK branch of the same group of companies.

Overseas manufactures and suppliers of goods who have a contract with a UK organisation are also able to send employees to the UK to install, dismantle, repair, service or advise on equipment, computer software or hardware.

SPONSORING WORKERS IN THE UK

EU nationals wishing to work in the UK from 1 January 2021, will need to obtain the correct immigration permission prior to arrival.

In order to submit an application, individuals will need to be sponsored by a UK employer holding a Sponsor Licence for the relevant category the employment will fall within.

Businesses or organisations that do not currently hold a Sponsor Licence should consider submitting an application to register as a sponsor with the Home Office as soon as practicable. Applications generally require businesses to:

- complete an online application form;
- gather and prepare the necessary documentation in support of the application. These are specific to the type of business and category of Sponsor Licence being applied for;
- pay a fee of £536 or £1,476 depending on the size or type of organisation; and
- submit the required documentation to the Home Office within 5 working days.

Applications ordinarily take up to 8 weeks to be processed and the Home Office is expecting an influx of applications. A new expedited process has been introduced which allows applications to be processed within 2 weeks for an additional fee of £500. A useful overview is the Home Office's [employers guide to becoming a licensed sponsor](#).

Businesses or organisations that do currently hold a Sponsor Licence should consider the categories that they are currently registered under to see whether an application should be made to add an additional category to their Sponsor Licence. For example sponsors who:

- hold a Skilled Worker or Intra-Company Transfer Sponsor Licence only may wish to add the other category¹; or
- have agreements with contractual service suppliers and independent professionals based solely in the EU or overseas may wish to add the T5 International Agreement Worker category, unless an EU trade deal allows for these to continue in the same way; or²
- regularly offer internships to EU nationals in the UK may wish to register with one of the T5 Government Authorised Exchange schemes to allow this to continue.

Businesses or organisations who currently hold a Sponsor Licence may also wish to update their linked entities (both overseas and in the UK) with the Home Office. This will allow for the transfers of employees from their EU offices and for any linked UK entities to rely on their Sponsor Licence without having to apply for one of their own.

All businesses will also need to be prepared for the increase in costs that will be associated with sponsoring EU nationals under the new single immigration system. The same fees will need to be paid as for non-EU overseas nationals. For a large employer sponsoring a single employee without dependants for 5 years, the government fees will be in excess of £9,500.

SERVICE PROVIDERS

Until talks are complete and we know whether a deal has been reached with the EU, it is not clear whether businesses in the UK will be able to continue receiving services from providers based in the EU. If an agreement is not reached, EU service providers will need to apply for a visa under the new single immigration system.

The UK has however already reached an agreement with Switzerland for service providers to continue operating in the UK. The initial agreement from 2019 permitted this so long as the contract was signed and commenced by 11 pm on 31 December 2020. This agreement is valid for a period of 5 years and allows Swiss service providers to spend up to 90 days in the UK in each calendar year.

A new immigration route for 'Service Providers from Switzerland' was introduced into the UK's immigration system on 1 December 2020 and requires Swiss services providers to apply for, and obtain, a visa before travelling to carry out any services in the UK from 1 January 2021.

The Services Mobility Agreement was also signed between the UK and Switzerland on 14 December 2020 and will last for two years. The indication is that Swiss professionals will be able to use the T5 International Agreement visa to deliver contracts in the UK in line with this agreement. Formal details are however still being awaited.

FRONTIER WORKERS

EU nationals who are employed or self-employed in the UK and commute to work in the UK but live elsewhere are considered to be frontier workers. Frontier

¹ The Skilled Worker and Intra-Company Transfer categories replaced the Tier 2 (General) and Tier 2 (Intra-Company Transfer) categories on 1 December 2020

² Does not apply to all sectors or services

workers will be able to keep their status in the UK as long as they began their employment by 11 pm on 31 December 2020.

On 10 December the Home Office launched the frontier worker permit scheme. Applications can be made online and all frontier workers will need to hold a permit when travelling to the UK from 1 July 2021. These workers will therefore have a 6 month grace period to apply and the scheme may be a viable alternative for EU nationals who travel to the UK regularly for work purposes.

For further details on the requirements of the frontier worker permit scheme please see our briefing on [Frontier Workers](#).

WHY MUST BUSINESSES COMPLY WITH THE NEW SINGLE IMMIGRATION SYSTEM

From 1 January 2021 it will become illegal to employ any EU nationals who do not have the correct right to work or immigration permission in place before they begin their employment in the UK. If a UK employer or business is seen to not be complying with the new rules, they may be prevented from employing any overseas nationals in the UK at all and could receive a civil penalty of up to £20,000 for each employee that does not have the correct immigration permission in place.

See our recent [Immigration Update](#) for more information on the UK's new single points-based immigration system.

For more detail on the immigration requirements that apply to businesses and EU nationals in the UK, please contact us.

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