



IMMIGRATION BREXIT UPDATE

11 December 2018
Pat Saini, Hazar El-Chamaa, Penny Evans
@Penn_Immig

Content

- Brexit deal – where are we now?
- Options for EU nationals and family members
- How to support your current workforce
- Right to work checks post Brexit
- The new immigration system – what do we know?



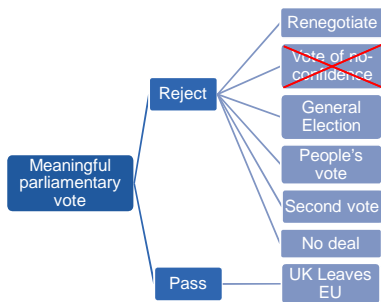
BREXIT DEAL – WHERE ARE WE NOW?



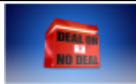
Brexit update – where are we now?



Brexit update – where are we now?



Brexit deal or no deal



- Deal – withdrawal agreement comes into effect
- No Deal - 6 Dec policy paper on Citizens' Rights
 - Government guarantees that EU citizens resident by 29 March 2019 can stay
 - In theory
 - EU migrants entering post exit will need to be subject to UK Immigration Rules
 - In practice
 - New Immigration system is not expected until 1 January 2021, therefore transitional arrangements will need to be put in place until December 2020



The PM's commitment to EU nationals

- 26 June 2017 – Government published proposals on rights of EU citizens
 - Followed by a policy paper confirming the creation of a new 'settled status'
- 28 August 2018 – Rules on EU Settlement Scheme came into force
 - First test phase of the scheme completed
 - Second test phase will end on 21 December 2018
 - Scheme to be rolled out fully by March 2019
- Policy paper – guarantees rights of EU nationals in no deal scenario



OPTIONS FOR EU NATIONALS AND FAMILY MEMBERS



Options for EU nationals and family members

Permanent residency

Pre-settled/settled status



European Regulations vs UK Law

	European Regulations	UK Law - Pre/Settled Status
Application process	Cumbersome and document heavy	Quick and easy no supporting documents needed in most cases
Document obtained	Registration Certificate or Permanent Residency (PR)	Pre-Settled Status or Settled Status
Advantages	Can backdate PR to when EU national completed 5 years - useful if want to apply for British Citizenship (BC)	Only need to show residency rather than exercise of treaty rights
Disadvantages	If don't apply for BC will have to apply to switch PR to Settled Status	Settled status cannot be backdated need to hold settled status for 12 months prior to applying for BC



Brexit timeline



NB: rights for citizens of Norway, Iceland, Liechtenstein and Switzerland are currently being negotiated, but it is intended that the settlement scheme will be open to them.



Ireland – common travel area (CTA)

- Agreement that rights of Irish citizens under the CTA are protected after Brexit
- No requirement to apply for settled status or any other status
- Rights to work, study, access social security and public services are preserved on a reciprocal basis
- EU nationals living in Ireland and working in Northern Ireland or vice versa will also be protected (frontier workers)
- Non-EU Family members of Irish nationals will need to apply under the EU Settlement Scheme



Application for pre-settled/settled status – criteria

- EU national or family member of an EU national
- Completed five years continuous residence* in the UK – settled scheme (<five years pre-settled)
- Resident in the UK by 31 December 2020
 - special provisions for family members joining after that date
- No serious criminal convictions/not a threat to national security

*No more than six months outside the UK in any 12 month period (exceptions apply)



Application process

- Quick online process - 10 mins
- Draws on data from other government departments for evidence of residency
- Submit NI number and declare criminal convictions
- Only need to upload documents if disagree with pre-settled status outcome
- EU Exit: ID Document Check App needed to scan passport and upload/take photo
- Application fee: £65 (£32.50 child)



Decision

- Preliminary decision
 - Pre-settled or settled status received instantaneously
 - If disagree with pre-settled status option to upload documents to confirm residency
- Final decision
 - Received within 1 to 2 days (during pilot)
 - Email with status reference number and link to online profile plus PDF letter confirming pre-settled/settled status
 - Non-EU nationals - BRP



Holders of ILR/PR documents

If meet criteria for settled status but already hold ILR or document confirming PR can:

- Exchange with settled status document (a must for those with permanent residency document)
- No fee
- Need to provide ID document and upload photo
- Confirm still living in the UK
- Declare any criminal convictions
- No repeat of residency assessment



Holders of pre-settled status

- Can exit the UK for up to two years without losing pre-settled status
- Status is not renewable
- To stay on in the UK beyond 2020
 - Need to qualify for settled status – no absences of more than six months in any 12 months
 - If don't qualify for settled status – apply to stay under new immigration system
- Employers to consider impact of travel on eligibility for settled status



1 July 2021 – mandatory requirement to hold relevant status

- Deadline for application under the scheme is 30 June 2021
- 1 January 2021 to 30 June 2021
 - Can still apply and stay on in the UK until decision is made
 - If do not apply by 30 June 2021 – discretion may be exercised to allow an "out of time" application for status
- Freedom of movement ends on 31 December 2020 so encourage employees to apply beforehand



Settlement scheme: deal vs no deal

Deal

- Resident by 31 Dec 2020
- Deadline - 30 June 2021
- Family members can join if relationship existed before 31 Dec 2020
- New Immigration system from 1 January 2021

No deal

- Resident by 29 Mar 2019
- Deadline - 31 Dec 2020
- Family members can join if relationship existed before 29 March 2019 and must apply by 29 March 2022
- New immigration system 1 January 2021



HOW TO SUPPORT YOUR CURRENT WORKFORCE



How to support your current workforce




RIGHT TO WORK CHECKS POST BREXIT



Right to work checks on new hires


	30 Mar 2019 to 31 Dec 2020	1 January 2021 onwards
EU nationals	<ul style="list-style-type: none"> Passport National ID cards 	<ul style="list-style-type: none"> Pre/settled status – online check Certificate of Application (CoA)* Those yet to apply under the Scheme - unclear Visa under new Immigration system
Family members	<ul style="list-style-type: none"> BRP CoA + PVN 	<ul style="list-style-type: none"> BRP under EU settlement scheme CoA + PVN under EU settlement scheme* Those yet to apply under the Scheme - unclear Visa under new Immigration system

NB: No need to re-do RTW checks on existing employees



How to prepare

- Train current staff
- HR systems may need to be changed
 - ID numbers to be stored/verification confirmation
 - Additional status to be added
 - Expiry dates
 - Remove national ID cards from acceptable ID documents
- Update documents
 - Contracts / Offer letters
 - Internal documents: right to work checklists/handbooks/policy documents/guidance




THE NEW IMMIGRATION SYSTEM – WHAT DO WE KNOW?




New immigration system

#WhereIsTheWhitePaper?



MAC recommendations – 18 Sept 2018

- EEA nationals should not receive preferential treatment
- EEA workers should come under Tier 2
 - abolish the annual quota
 - abolish RLMT (advertising)
 - lower the skill level from RQF 6 to RQF 3
 - allow switching more easily
 - maintain the minimum salary threshold - £30,000
- No special immigration category for lower skilled migrants (RQF 1&2) – except SAWS
- Youth Mobility Scheme (18-30yr olds) for EEA nationals
- EEA self-employed nationals – no recommendations



Useful links

- EU Settlement Scheme pilot: applicant information
<https://www.gov.uk/government/collections/eu-settlement-scheme-pilot-applicant-information>
- Status of EU citizens in the UK: what you need to know
<https://www.gov.uk/guidance/status-of-eu-nationals-in-the-uk-what-you-need-to-know>
- EU Settlement Scheme: employer toolkit
<https://www.gov.uk/government/publications/eu-settlement-scheme-employer-toolkit>
- Online checking service
<https://www.gov.uk/government/publications/eu-settlement-scheme-view-and-prove-your-rights-in-the-uk/view-and-prove-your-rights-in-the-uk>
- Sign up for email updates
<https://gov.smartwebportal.co.uk/homeoffice/public/webform.asp?id=67&id2=627DF7>



Contact details

Pat Saini, Partner & Head of Immigration

t: +44 (0)20 7457 3117

e: pat.saini@penningtons.co.uk

Hazar El-Chamaa, Partner

t: +44 (0)20 7457 3194

e: hazar.el-chamaa@penningtons.co.uk

Penny Evans, Associate Director

t: +44 (0)20 7457 3195

e: penny.evans@penningtons.co.uk



LONDON
BASINGSTOKE
CAMBRIDGE
GUILDFORD
OXFORD
READING
SAN FRANCISCO

www.penningtons.co.uk

Penningtons Manches LLP is a limited liability partnership registered in England and Wales with registered number 02211979. San Francisco is an office of Penningtons Manches LLP and is a California registered limited liability partnership with number 2007 000083.
