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NO-DEAL BREXIT

Immigration changes you
need to know about

No-deal Brexit – immigration changes you need to know about

The UK Government appears committed to leaving the EU on 31 October 2019, with or without a deal.

This brief guide explains the main immigration consequences for organisations employing EU nationals. A no-deal Brexit is likely to have serious long-term consequences for employers' ability to recruit and retain EU employees. In short, while the rights and status of EU nationals resident in the UK by 31 October 2019 will be protected, the position is much less certain for those entering the UK after that date.

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Consequences of a no-deal Brexit for EU nationals and their family members

EU nationals currently have rights under EU treaties as incorporated through domestic legislation and regulations. These Treaty rights allow EU nationals and their family members to enter and reside in the UK. EU nationals have an initial right of entry for a three-month period; thereafter those who are in the UK must be exercising free movement rights as a “worker”, a “self-employed person”, a “self-sufficient person” or a “student” to have an automatic right of residence. It is worth noting that those who are “students” or “self-sufficient” are also required to hold private medical insurance in order to exercise their free movement rights.

These free movement rights will not end on 31 October 2019 as they are currently enshrined in primary legislation and Parliament would have to pass new legislation to repeal these existing laws. This means EU nationals can continue to enjoy free movement rights until such legislation is enacted.

The most immediate consequence of a no-deal Brexit is that it limits the categories of EU nationals who can apply under the EU Settlement Scheme. In short, EU nationals who enter the UK after 31 October 2019 will not be eligible to apply under the EU Settlement Scheme, which guarantees and protects the rights of EU nationals to live and work in the UK permanently.



EU Settlement Scheme – how does a no-deal Brexit change this scheme?

All EU nationals resident in the UK prior to 31 October 2019 are able to apply under the settled status scheme, which allows them and family members resident in the UK before 31 October 2019 to remain in the UK indefinitely.

The scheme has two tiers:

1. Settled status is for EU nationals and their family members who have been resident in the UK for a continuous period of five years or more.
2. Pre-settled status is granted to those EU nationals and their family members who have not yet obtained five years' continuous residence. Once they have been resident for a continuous period of five years, they can then apply to switch into settled status.

The rights that EU nationals and their family members have under each of these statuses is significant.

All EU staff resident in the UK prior to 31 October 2019 will be eligible to apply under the Settled Status Scheme (EUSS). The EUSS is a mandatory scheme and EU nationals have only until 31 December 2019 to apply under the scheme in the event of no deal. If a deal is reached, the deadline will be extended to 30 June 2021.

Settled Status	Pre-Settled Status
Indefinite leave to remain	Limited leave to remain for five years
Can be absent from the UK for a single consecutive period of up to five years before losing the status	Must re-apply for settled status once they have been resident in the UK for five years.
No need to make any further application	Pre-settled status can lapse if individuals are resident outside the UK for a consecutive period of two years
Can qualify to apply to naturalise as a British citizen 12 months after obtaining settled status or immediately if married/in a civil partnership with a British citizen	Will not ordinarily qualify for settled status if absences exceed 180 days in any 12-month period during the five-year period



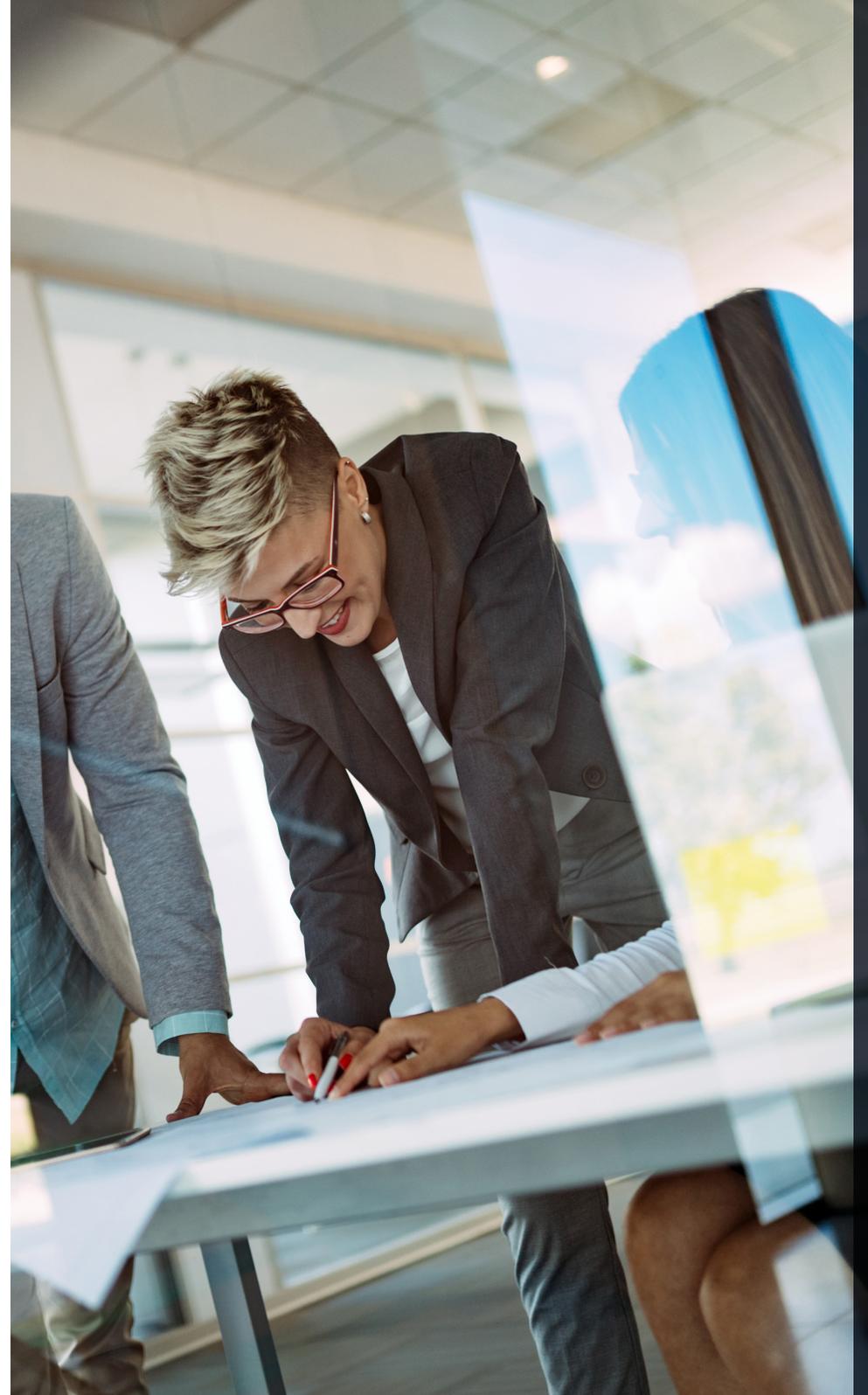
Non-UK resident EU workforce

In the event of a no-deal Brexit, EU nationals will continue to be able to enter the UK to live and work, until free movement ends through repeal of primary legislation (see above). For those EU nationals who enter after 31 October 2019, there will be no clear path to obtaining a permanent right to live in the UK and their long-term future in the UK is uncertain.

EU nationals who enter after 31 October 2019 can choose to make an application to the Home Office for leave to remain under the newly-created EU-Temporary Leave (Euro TLR) route. This new visa grants a successful EU national permission to live and work in the UK for a period of up to three years, after which they will need to switch into another route within the immigration rules or leave the UK.

The Euro TLR visa will be issued free of charge following completion of a digital application, which involves criminal record checks. Further details on this route, including how the criminal record checks will operate, are yet to be published. Further details on the route can be found [here](#).

Another difference between Settled Status and Euro TLR relates to how minor criminality will be dealt with under the new scheme. The UK Government has indicated that it intends to assess those applying under the Euro TLR in accordance with the much harsher General Grounds for Refusal. This could see some EU nationals with a relatively minor criminal conviction being refused leave to remain and being forced to leave the UK.



Evidencing your workforce's right to work

The UK Government has repeatedly assured employers that EU nationals in the UK will continue to be able to produce a valid EU passport as evidence of a right to work in the UK until 1 January 2021. This is good news for employers who will face having to deal with four types of EU nationals lawfully residing in the UK: those who have status in terms of the EU settlement scheme, those who have the right to apply under the EUSS but have not done so, those who have Euro (TLR) status and those who have the right to apply for Euro TLR but have not done so.

Current workforce

Employers are able to continue to rely on an EU passport as evidence of an EU national's permanent right to work up to 1 January 2019. This will protect you from a civil penalty for illegal employment.

Future workforce

From 1 January 2021, employers will not be able to rely on an EU passport alone and will need further evidence of a right to work. This can be a valid Biometric Residence permit, such as those currently issued to non-EU nationals, or new online verification codes, which are being issued to EU nationals who secure either settled or pre-settled status.

It is important to note that employers are under no obligation to check if their current employees have obtained the correct status in time.

However, if an employee does not have the correct status then they could be in the UK unlawfully and liable to detention and removal from the UK.

Further, questions remain in terms of whether an employer could face potential criminal liability in circumstances in which they know an EU national no longer has immigration permission to be in the UK. The law makes it a criminal offence to employ a person who you have reasonable grounds to believe does not have the appropriate immigration permission to work in the UK.



No-deal Brexit Action Plan



Brexit will have wide-reaching implications for EU nationals and their family members. Many employers are choosing to provide support to their EU staff at what is a difficult time. Support can involve regular communications to staff as well as providing one-to-one sessions with specialist immigration lawyers who can answer queries on topics ranging from the EU Settlement Scheme and naturalising as a British citizen to the rights of EU children to obtain a British passport;

Map out your existing international workforce:

- Are there any EU nationals working for you overseas who you should bring to the UK prior to 31 October 2019 so that they can make an application under the EU Settlement Scheme?
- Are there UK workers in other EU states who need to have their status regularised?

Identify key or vulnerable staff members who you think may require assistance or prompting to ensure compliance with the new regime

Are there any recruitment processes you can bring forward involving EU national staff living outside the UK to ensure they can be resident in the UK prior to 31 October 2019 in order to make an application under the EU Settlement Scheme?



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Note: While the foregoing summary is given in good faith, it is not exhaustive and is liable to change in light of political, economic and legal developments. Specific advice should be taken before initiating or taking any course of action.